Comdr. George C. Logan to be a captain in the Navy from the 1st day of April 1934.

Lt. Miles P. Duval to be a lieutenant commander in the Navy from the 30th day of June 1933.

Lt. Edgar R. Winckler to be a lieutenant commander in the Navy from the 1st day of September 1933.

Lt. Raymond G. Deewall to be a lieutenant commander in the Navy from the 12th day of November 1933.

Lt. Charles F. Waters to be a lieutenant commander in the Navy, from the 1st day of January 1934.

Lt. (Jr. Gr.) Robert S. Carr to be a lieutenant in the Navy, from the 1st day of July 1933.

Lt. (Jr. Gr.) Joseph W. Fowler to be a lieutenant in the Navy, from the 1st day of November 1933.

Lt. (Jr. Gr.) James H. McIntosh to be a lieutenant in the Navy, from the 13th day of November 1933.

Lt. (Jr. Gr.) Elliott W. Shanklin to be a lieutenant in the Navy, from the 19th day of November 1933.

Lt. (Jr. Gr.) Wilfred E. Lankenau to be a lieutenant in the Navy, from the 1st day of March 1934.

The following-named ensigns to be lieutenants (junior grade) in the Navy, from the 5th day of June 1933:

Rudolph C. Bauer.
Macpherson B. Williams.
Roscoe L. Newman.

Medical Inspector William M. Kerr to be a medical director in the Navy, with the rank of captain, from the 1st day of February 1932.

The following-named assistant dental surgeons (temporary) to be assistant dental surgeons in the Navy, with the rank of lieutenant (junior grade), from the 21st day of March 1934:

Erwin J. Shields	Richard M. Bear
Lauro J. Turbini	Max W. Kleinman

Assistant Paymaster Lloyd H. Thomas to be a passed assistant paymaster in the Navy, with the rank of lieutenant, from the 1st day of November 1933.

CONFIRMATIONS

Executive nominations confirmed by the Senate April 20 (legislative day of Apr. 17), 1934

SECRETARIES IN THE DIPLOMATIC SERVICE

George M. Abbott to be Secretary in the Diplomatic Service.

Cecil Wayne Gray to be Secretary in the Diplomatic Service.

CONSUL

Waldemar J. Gallman to be consul.

PROMOTIONS IN THE NAVY

To be captain

John S. Barleon.

To be commanders

Chapman C. Todd.
Paul Cassard.

To be lieutenant commanders

Alexander B. Holman.
Fred A. Hardesty.

To be lieutenants

John H. Morrill	Frederick J. Bell
John E. Spahn	Charles A. Ferriter
John B. Rooney	Chester E. Carroll
William A. Evans, Jr.	

To be lieutenants (junior grade)

George N. Butterfield	Edwin G. Kelly
Lance E. Massey	Joseph E. Dodson

To be medical directors

Alfred J. Toulon.
Glenmore F. Clark.
John B. Pollard.

To be chief carpenter

John Bryan.

HOUSE OF REPRESENTATIVES

FRIDAY, APRIL 20, 1934

The House met at 12 o'clock noon.

The Chaplain, Rev. James Shera Montgomery, D.D., offered the following prayer:

We praise Thee, O God; we acknowledge Thee to be the Lord. Out of the depths, Heavenly Father, where the purest affections and the sweetest emotions have their birth, we appeal to Thee for help and guidance. This day allow nothing to come between us and the light. We do not pray for easy ways, but we do pray that we may be strong men with powers of understanding to meet our tasks. Bless us with a most helpful measure of grace, and may we be rich in wisdom, faithfulness, and sincerity. May we ever cherish ideals as the travelers of old cherished the stars, and keep their guiding light radiant and high above the dust, the clouds, and the mists of earth. Heavenly Father, establish in all breasts the secret of a good, useful life which is never to allow our spiritual and mental powers to become stagnant. In the name of our Savior. Amen.

The Journal of the proceedings of yesterday was read and approved.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Horne, its enrolling clerk, announced that the Senate had passed, with amendments in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 8861. An act to include sugar beets and sugar cane as basic agricultural commodities under the Agricultural Adjustment Act, and for other purposes.

The message also announced that the Senate insists upon its amendments to the foregoing bill, requests a conference with the House thereon, and appoints Mr. HARRISON, Mr. KING, Mr. GEORGE, Mr. COSTIGAN, Mr. REED, and Mr. COUZENS to be the conferees on the part of the Senate.

The message also announced that the Senate agrees to the report of the Committee of Conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2032) for the relief of Richard A. Chavis.

The message also announced that the Vice President had appointed Mr. WAGNER and Mr. NORBECK members of the Joint Select Committee on the part of the Senate, as provided for in the act of February 16, 1889, as amended by the act of March 2, 1895, entitled "An act to authorize and provide for the disposition of useless papers in the executive departments", for the disposition of useless papers in the Interior Department.

COMMITTEE ON BANKING AND CURRENCY

Mr. STEAGALL. Mr. Speaker, I ask unanimous consent that the Committee on Banking and Currency may be permitted to sit during the sessions of the House today and tomorrow.

The SPEAKER. Is there objection to the request of the gentleman from Alabama?

There was no objection.

Mr. STEAGALL. Mr. Speaker, a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. STEAGALL. What would the ruling of the Chair be on a point raised that the report on a bill was ordered to be made in the committee while the House was in session, the committee not having the permission of the House to sit during the sessions of the House?

The SPEAKER. The Chair understands the rule to be that a committee can transact no business at all while the House is in session unless that committee has the permission of the House to sit during the sessions of the House. The Chair will read the rule.

No committee of the House, except the Committee on Rules, shall sit during the sittings of the House without special leave.

Mr. STEAGALL. I ask for information in connection with H.R. 7908, which was reported on the 12th of April.

The SPEAKER. Does the Chair understand that it was reported out by the committee while the House was in session?

Mr. STEAGALL. That is correct.

The SPEAKER. In reply to the parliamentary inquiry the Chair will state that the action of the committee in so reporting the bill is absolutely void, and the Chair will direct that the report and the bill be stricken from the calendar. The purported report on the bill (H.R. 7908) made to the House on April 12, 1934, being invalid the Chair holds that the bill is still before the Committee on Banking and Currency for such action as that committee thinks fit and proper.

QUESTION OF PERSONAL PRIVILEGE

Mr. BLANTON. Mr. Speaker, on yesterday afternoon the Washington Times, a Hearst paper, falsely and maliciously stated that I was censured by the Speaker of this House, and also yesterday afternoon in the little Washington News there appeared under large headlines the false and malicious statement, "BLANTON is censured." And in this morning's Washington Herald, another Hearst newspaper, it falsely and maliciously stated that I was reprimanded by the Speaker of the House. And this morning's Washington Post falsely and maliciously stated that the Speaker reprimanded me yesterday. I claim that is a question of personal privilege, and I ask to be recognized.

The SPEAKER. The Chair will say that the Speaker of the House cannot censure or reprimand a Member except on instructions by the House. The statement made in the newspapers is not true. The Speaker did not censure or reprimand the gentleman from Texas [Mr. BLANTON]; he simply read the rule that certain words were out of order, and the House struck them from the RECORD. Immediately afterward permission was given to the gentleman from Texas to proceed in order in the committee when it resumed its session, which the gentleman from Texas did.

The Chair holds that the statement made about the gentleman from Texas [Mr. BLANTON] in the newspapers in question give him the right to rise to a question of personal privilege and address the House. The Chair recognizes the gentleman from Texas.

Mr. BLANTON. I am deeply grateful to the able and distinguished Speaker of this House for correcting this great injustice which these domineering Washington newspapers deliberately and maliciously tried to do me. While under the rules I am entitled to the floor for an hour, I hope to use only a small part of that time. I regret the necessity of using any time today, but I do not intend to continue to allow them to maliciously and deliberately publish baseless lies about me and get away with it.

All of my colleagues here know why the Hearst papers lie about me. I am one of those here who fearlessly opposes William Randolph Hearst when he tries to put anything over on the people of the United States. I tell him and his newspapers where to head in, and they do not like it. And all of you older Members here know why Eugene Meyer, the great get-rich-quick-on-the-Government, and his Washington Post dislike me. And it is hardly worth while to even mention the waspy little Washington News.

While Eugene Meyer was amassing his fortune as the head of the Federal Reserve and was putting into effect his unwise policies that broke many of the well-to-do cattlemen of the United States and eventually closed many good banks all over the United States and impoverished American farmers, I was criticizing his waste and extravagance and his policies that permitted him and others to amass unearned and unmerited private fortunes and was doing my dead level best to have him kicked out of the Federal Reserve System. The Washington Post was the natural heritage of the McLean boys. When, with his unlimited money and his paid hirelings, Eugene Meyer secretly hornswoggled these minors out of their family heritage I gave him a good dressing down about it. So he and his reporters take their spite out on me by misquoting me, by maliciously attacking me, by unwarranted abuse, and by printing false statements about me.

Eugene Meyer runs in his Washington Post what he calls "The National Gallery", which clearly exemplifies the contempt and hate he has in his heart for all Senators and Congressmen. He has employed a cheap, unskilled, caricaturist named S. Robles, who daily, under said "The National Gallery", and over the name of some Senator or Congressman, prints some crude drawing that more resembles some animal than a human, and which does not in the slightest way resemble in any particular the one whom it attempts to depict. The ridiculous caricature Eugene Meyer's Post carried this morning of our colleague, Hon. ANDREW L. SOMERS, of New York, is a vicious libel that has no excuse or justification whatever. He takes a fiendish delight in picturing Senators and Congressmen as pudgy, senile, imbecilic morons, without a single feature of intelligence about them. He wants his readers to get this impression of Senators and Congressmen. He has libeled every one he has caricatured, and every one of them ought to file damage suits against Eugene Meyer that will make him sleepless at night.

HEARST'S CANADA JUNKET

William Randolph Hearst invited me to go on his junket trip through Canada, sending me a two-page telegram to my home in Abilene during vacation, and offered to pay all of my expenses, but I did not fall for it. As soon as that Congress met, we found him trying to get the Members whom he had entertained on this junket, to put a sales tax over on the people, and overburden the already tax-burdened shoulders of the people. I was one of those here who fought him to a finish. And we licked him. And he has never forgiven us for it.

HEARST'S FIGHT TO RESTORE SALARY CUTS

Then daily from the time this Congress met William Randolph Hearst browbeat and abused Congress in an attempt to force it to restore all pay cuts in Government salaries. He had not restored pay cuts to his employees. I was one who would not let him cajole me. I would not fall for his threats. I fought back when he abused. And we passed a law that continued that part of the cuts which the President did not agree to restore.

HEARST NOW WANTS HIS LOST DEPOSITS

Lately Hearst has been browbeating Congress trying to get it to pass his McLeod bill, that will make the taxpayers of the United States pay back to him his millions he has lost in defunct banks. And his papers went so far as to induce some employee or Member of the House to violate House rules, in giving them the names on an uncompleted petition, which three Speakers of the House, including Vice President Garner, have held that such list cannot be made public under the rules, until it has been signed by 145 Members and entered in the RECORD. And when I criticized him for stealing this information, to which Hearst was not entitled, his papers falsely represented that I wanted to keep the proceedings of Congress secret. I am one of those here who has contended that all proceedings of Congress should be public, and kept in the open. But when a rule of the House forbids an incomplete petition to be made public, I want to see William Randolph Hearst and the Associated Press respect such rules of the House, just as those not in high authority are forced to respect same.

FALSE A.P. REPORT TO MY HOME PAPER

My splendid home paper, the Abilene Morning News, in its issue of April 17, 1934, in an A.P. report from Washington dated April 17 stated that I attacked newspapers for publishing a list of petitioners, intimating that I was trying to keep congressional proceedings from the public, when the facts were that I had objected to Hearst and the Associated Press stealing incomplete proceedings which the rules of the House forbade them getting. I was demanding that the rules of the House be respected by the A.P. and Hearst. And if the valuable and hitherto dependable Associated Press wants the public to have confidence in its reports, and to give them due credence, it must stop misquoting what happens

on this floor. Let it print the truth. This is just a concerted, continued effort on the part of the Washington newspapers to abuse me because I do not obey their orders. The caustic remarks I made yesterday about my friend from Pennsylvania [Mr. DITTER] in the heat of debate were in violation of the rules and should not have remained in the RECORD, and I do not censure my good friend from New York, the minority leader [Mr. SNELL], for protecting one of his Republican Members when somebody is rapping him. That is his duty. I am still his friend. I expect him to do it, just as I would expect the majority leader to defend a Democrat on this side.

We often get without the rules of the House in debate. Rules are violated here every day. The Speaker merely rules according to points of order that are raised. As the Speaker has said, he did not censure me and did not reprimand me. He merely ruled on a point of order. Inasmuch as one of these newspapers states that "Speaker HENRY T. RAINEY censured and reprimanded Representative THOMAS L. BLANTON once before", may I ask the Speaker now, has the Speaker ever reprimanded or censured me since he has been Speaker of this House?

The SPEAKER. The Speaker never has done either.

Mr. BLANTON. I thank the Speaker. I see our distinguished and beloved majority leader here, JOE BYRNS. When I was making a fight yesterday for the Democratic party, and to preserve and protect our Democratic appropriation bill, I want to ask him if he censured me for anything I did.

Mr. BYRNS. Every member of the House knows that a ruling such as was made yesterday was in no sense a censure or reprimand of the gentleman from Texas and certainly the gentleman knows that I did not censure him. The gentleman from Texas is one of the hardest working and most useful Members of this House. He is a man of very positive and emphatic convictions, and he never hesitates to express them. He is usually, and he should be, very vigorous in presenting his opinions and his views upon legislation pending here. There is no more active Member than the gentleman from Texas. I have often said that the gentleman, during his service here, has rendered a splendid and great service to the House and country.

Mr. BLANTON. I deeply appreciate that statement from our Democratic leader. And may I ask the majority leader if it is not a fact that I always faithfully cooperate with him, and sometimes obey his orders?

Mr. BYRNS. I would not say that the gentleman obeys my orders, because I never give any.

Mr. BLANTON. And the gentleman from Tennessee, our Democratic leader, is the only man here whose orders I would obey. [Laughter.]

Mr. BYRNS. I never give any orders. The gentleman is very active and very earnest and very loyal to the organization of the House.

Mr. COCHRAN of Missouri rose.

Mr. BLANTON. And I see my good friend from Missouri here [Mr. COCHRAN]. When he offered his amendment yesterday to add an additional $36,823 to the Utilities Commission item in the bill, I opposed and helped to defeat his amendment. That did not interfere with our friendship. I just did not believe this $36,823 was necessary. Yet simply because I opposed the $36,823 the newspapers played us up as enemies and said my friend gave me a tanning yesterday. [Laughter.] Is there anything between the gentleman from Missouri and myself that would warrant the newspapers in saying that he gave me a tanning?

Mr. COCHRAN of Missouri. If the gentleman from Missouri had given the gentleman a tanning yesterday, he would not look so good today. [Laughter.] Will the gentleman yield?

Mr. BLANTON. Yes; for another tanning.

Mr. COCHRAN of Missouri. Will the gentleman tell the gentleman from Missouri how he gets it into his head that he was making a fight yesterday for the Democratic Party? The Democratic Party has never asserted in convention or otherwise that its members should legislate for the Capital of the Nation as though it were a country town. I challenge the gentleman's statement; and I think that the whip of the Democratic Party had a lot of nerve when he sent out the letter he did to the Members yesterday to support the bill; and I resent that, too. The whip on our side should not take it upon himself to send out letters affecting legislation that cannot, by any stretch of imagination, be classed as party measures. That is not his duty.

Mr. BLANTON. I was at least working with the Democratic leadership in protecting that bill against the onslaught of my friend's $36,823 amendment. Appropriation bills have to be protected. The majority in control of Congress has to protect its bills, and the leadership looks to the Members in charge of appropriation bills that the majority places at the table to protect their bill.

I was working with the leadership, and we had enough votes to defeat all amendments. I know there were not many Members remained on the floor, and I know that the gentleman from Missouri [Mr. COCHRAN] made a gallant fight, which is the kind he always makes. And every Member here appreciates the good work he is constantly doing here. He has one of the finest newspapers in the country in his city of St. Louis, the St. Louis Post-Dispatch. I think there is no better newspaper in the United States than the St. Louis Post-Dispatch. I read it regularly. I know that it is fighting for control of public utilities, just as my friend is fighting for their control, and I am fighting with them. I caused to be held at Abilene some years ago a public mass meeting to show how Samuel Insull had control of our power officials in Texas, and at that hearing I predicted what would happen to Samuel Insull. I have been fighting monopolistic public utilities of the country for many years, right along with my good friend and the St. Louis Post-Dispatch.

Mr. COCHRAN of Missouri rose.

Mr. BLANTON. And right with the gentleman from Missouri, I will continue to fight such monopolies.

Mr. COCHRAN of Missouri. While, of course, I cannot concede that the gentleman from Texas [Mr. BLANTON] was right yesterday, I will admit he has been one of the leaders in the fight against public utilities and has exerted himself in an effort to secure a fair deal for the public. The fact that he has always fought the battles of the little fellow is what puzzled me yesterday. The country is indebted to the gentleman from Texas for his services here. I have not always agreed with him, as was demonstrated yesterday, and I hope that between now and the time the bill comes back from the Senate he will see his mistake on the question in which I am interested, and being one of the conferees, he will accept the Senate amendment; for I am sure the Senate will restore the amount recommended by the Bureau of the Budget. Such action on his part will demonstrate what he has so often demonstrated here, that he is a real champion of the great masses and not the special interests.

Mr. BLANTON. As a conferee on the bill, I will of course carefully consider all amendments that the Senate may place thereon. But I sincerely hope that the Senate will find this bill such a generous and well-proportioned measure it will not deem it necessary to amend it in any particular.

Before closing, Mr. Speaker, I want to mention one other very unfair statement in a newspaper. In the last issue of the Gorman Progress it erroneously states that I "voted to override the President's veto of the 'salary grab' act." That shows you just how very erroneous impression a newspaper editor in Gorman, Tex., can get from irresponsible newspaper reports sent out from Washington. The bill that we passed over President Roosevelt's veto was not a "salary grab" bill, but just the opposite. If we had not passed this bill, there would have been a "salary grab." By passing this bill we prevented a "salary grab." The editor of the Gorman Progress is a good man, and means well, and would not knowingly mislead his readers, and he thought that he was telling them the truth. But he was not. Here are the facts: All pay cuts in all Government salaries expire on June 30, 1934. If no law were passed before July 1 continuing pay cuts, all cuts would be restored and former salaries would be paid in full. Those wanting a "salary grab" did not want any law passed. But to continue on after July 1 that part of the cut which

the President wanted continued, it was necessary for us to pass the law that we did pass. I hope that the Gorman Progress will correct its erroneous statement.

SUGAR

Mr. JONES. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 8861) to include sugar beets and sugar cane as basic agricultural commodities under the Agricultural Adjustment Act, and for other purposes, with Senate amendments thereto, disagree to the Senate amendments, and agree to the conference asked by the Senate.

The Clerk reported the title of the bill.

The SPEAKER. Is there objection?

Mr. WOLCOTT. Reserving the right to object, in what way has the Senate amended the House bill?

Mr. JONES. The bill has just come over, and I have not had a chance to go over the Senate amendments. I am simply asking to send the bill to conference to expedite matters. A number of amendments were made to the bill in the Senate, but as to the merits of them I have not had an opportunity to make full inquiry.

Mr. WOLCOTT. Will the action we are about to take prevent the Membership from voting on the conference report to be reported out later?

Mr. JONES. After the conferees agree, should they reach that point, the report will come back to the House for final vote.

Mr. WOODRUFF. Mr. Speaker, reserving the right to object, as I understand it, this is merely a request to permit the House to appoint conferees.

Mr. JONES. Yes

Mr. WOODRUFF. To give them an opportunity to consider the amendments that have been adopted by the Senate. Mr. Speaker, I have no objection.

The SPEAKER. Is there objection to the request of the gentleman from Texas? [After a pause.] The Chair hears none, and appoints the following conferees: Messrs. JONES, FULMER, DOXEY, HOPE, and KINZER.

ONE HUNDRED AND FIFTY-NINTH ANNIVERSARY OF THE BATTLE OF LEXINGTON

Mr. DOUGLASS. Mr. Speaker, I ask unanimous consent to address the House for 3 minutes.

The SPEAKER. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

Mr. DOUGLASS. Mr. Speaker, on yesterday, the one hundred and fifty-ninth anniversary of the Battle of Lexington, the amiable and distinguished gentlewoman from Massachusetts introduced into the RECORD a petition from citizens of Lexington which in effect was a criticism of this administration. Now, I do not propose in these 3 minutes to argue with the gentlewoman from Massachusetts. In fact, I know enough not to argue with the gentlewoman; but I shall let my constituents answer her in the words of the following telegram received by me yesterday:

> The citizens of the North End, numbering several thousands, in public celebration in North Square opposite home of Paul Revere, unanimously adopted the following resolutions:
>
> "We, the residents of the North End, representing the spirit of those whose patriotism and leadership inspired the hearts of Americans in every part of the Thirteen Colonies to action, heartily endorse the administration of President Roosevelt and rejoice in the leadersip he has given to the people of the United States the past year, resulting in preserving the homes, protecting the savings of a lifetime, and giving decent living conditions to millions of Americans on the verge of despair when he took office.
>
> "We resent the actions of certain citizens of Lexington taking advantage of a public holiday to decry the patriotic leadership of our beloved President instead of calling attention to his marvelous statesmanship, which commands the admiration of the civilized world.
>
> "We feel we speak as Cotton Mather, James Otis, Paul Revere, Benjamin Franklin, and Sam Adams would speak if they were here.
>
> "North End Post, No. 53, American Legion, Nicholas Scaramella, commander, Charles Rizzo, vice commander; John F. Fitzgerald; Mary Bacigaluppo; Dr. Lena Salemme, president Legion Auxiliary; Dr. Leanardi; Stephen Foti; Marguerite Prezioso; Mrs. Frank Beninicase; Frederick Masucci; Alfred Santosousso; Mrs. Jeni Catino; James Bacigaluppo."
>
> Newspapers say Mrs. ROGERS will present Lexington resolutions today. Hope you will answer her with these resolutions.
>
> JOHN F. FITZGERALD.
> NICHOLAS SCARAMELLA,
> *Commander Post 53, American Legion.*

All these signers are American citizens. [Applause.]

JOSEPH W. MOLYNEAUX, UNITED STATES DISTRICT JUDGE, MINNESOTA

Mr. SHOEMAKER. Mr. Speaker, I rise to a question of the privilege of the House.

On my responsibility as a Representative, and in the presence of this House, and before the American people, I charge Joseph W. Molyneaux, judge of the United States District Court for the District of Minnesota, with the commission of acts which, in the contemplation of the Constitution, are high crimes and misdemeanors.

The SPEAKER. The Clerk will report the charges and the resolution.

The Clerk read as follows:

House Resolution 344

I do impeach Joseph W. Molyneaux, United States district judge for the district of Minnesota, of high crimes and misdemeanors. I charge him with usurpation of power and violation of law in that—

(1) He has corruptly used his judicial powers in the appointment of receivers.

(2) In that he has corruptly disposed of estates in receivership under his jurisdiction so as to embarrass bankrupts and annihilate assets of litigants and others appearing in his jurisdiction.

(3) In that he has corruptly interfered with justice and committed acts which in the contemplation of the Constitution are high crimes and misdemeanors.

(4) In that through mental senility or dishonesty he has denied justice and practiced favoritism and brought the Federal judiciary in disrepute throughout the Nation: Therefore be it

Resolved, That the Committee on the Judiciary be, and they are hereby, authorized to inquire into the official conduct of Joseph W. Molyneaux, district judge for the United States District Court of the District of Minnesota, discharging the powers and duties of the office of said district judge, and to report to this House whether, in their opinion, the said Joseph W. Molyneaux, while in said office, has been guilty of acts which were designed or calculated to overthrow, subvert, or corrupt the Government of the United States, or any department or officer thereof; and whether the said Joseph W. Molyneaux has been guilty of any act or has conspired with others to do acts, which, in contemplation of the Constitution, are high crimes and misdemeanors, requiring the interposition of the constitutional power of this House; and that said committee has the power to send for persons and papers and to administer the customary oath to witnesses.

Resolved further, That the Clerk of the House of Representatives be directed to pay out of the contingent funds of the House, on the order of the Committee on the Judiciary, such sum or sums of money as may be required to enable the said committee to prosecute the investigation above directed and such other investigations as it may be ordered to make.

The SPEAKER. The gentleman from Minnesota is recognized for 1 hour.

Mr. SHOEMAKER. Mr. Speaker, on the 22d day of January last I took the floor of the House and introduced a resolution asking for the impeachment of Joseph W. Molyneaux, Federal judge for the district of Minnesota.

The judiciary throughout the United States, as we all know, is fomenting a revolution in America. In the United States, as in other countries, revolutions have been brought about by judges sitting in their high places. The revolution which brought about the Christian religion, if you please, was brought about by a judge sitting in a high place. These judges who today are usurping their power—and I am directing my charges today against one judge, Joseph W. Molyneaux—have discredited the judiciary, the judicial system, and our system of jurisprudence not only in my State but throughout the United States.

To begin with, I am sorry to state that this judge has not his right mind. He has a very bad case of mental senility, if such it may be called. He has been taken upon several occasions to institutions for the cure of mental cases. He has been removed from Minnesota by his friends and confined in sanitoria in California. As a matter of fact, he is crazy; yet sitting on the Federal bench, if you please.

The State of Minnesota is blessed with the left wing of the Chase National Bank, the Wiggin outfit of Wall Street. This same judge is tied in with that institution through

the ownership of stock by his wife in affiliated institutions. This Northwest Bank Corporation affiliated with the Chase National and Wiggin throughout the Northwest, with about 158 affiliated banks in its chain, put across a stock-selling orgy several years ago in which they sold about $100,000,000 of stock to the people throughout the Northwest. They were the big clearing-house bank of Minneapolis. The other banks borrowed money from them. They would get other little banks into a hole and then force liquidation of the assets put up as collateral for the loans, and force the banks into the combination. Then this combine would issue stock and sell it in the little community where the bank had existed for years. They would sell the stock at fabulous prices. The stock was sold up to $100 a share. It was nothing but a promotion scheme, pure and simple, the most high-handed kind of robbery. The people were led to believe that it was a strong institution, that they would be safe.

The employees of practically every one of these banks were forced to buy stock in the bank and to assign each week a certain portion of their pay in payment for this stock, to be deducted by the bank at the end of each week from the pay of the employee. This stock, which sold for around $100 a share, is now worth between $4 and $5 on the market. Widows put their life savings in this bank stock. They were called in by the cashiers and employees of the various banks, and especially the president, Mr. E. W. Decker, whom I caused to resign as president of this institution last January. Their life savings were put into this stock. They have lost everything. There are something like 3,000 upon the charity lists and in the poorhouses today in the State of Minnesota who just a few years ago were pretty well off, and who invested their money in this nefarious outfit.

It came to the point where the State of Minnesota said that something must be done. Money was appropriated by the Legislature of the State of Minnesota to make an investigation through its blue-sky commission or its commerce commission into the activities and the methods used in selling this stock and the manner in which the people of the State of Minnesota had been robbed by this tentacle from the Wall Street octopus.

The investigation was started by the State of Minnesota. Whereupon, this chain-bank institution appeared before Judge Joseph W. Molyneaux and got a restraining order or injunction restraining the State of Minnesota from protecting its own citizenship against the graft of the bankers of the State of Minnesota and of the State of New York, interfering with State rights, interfering with the constitution of the State of Minnesota, and in violation of the Constitution of the United States of America. Knowingly and willfully did the judge issue an injunction restraining the State of Minnesota from protecting its citizenship against the most vicious kind of graft that has ever been perpetrated upon the citizenship of any State in many years.

Mr. Speaker, I ask unanimous consent that the restraining order may be placed in the RECORD.

The SPEAKER. Without objection it is so ordered.

There was no objection.

Mr. SHOEMAKER. This necessitated an answer from the State of Minnesota. The State was required to come before the court.

After my speech against the judge on the 22d of January of this year he got cold feet. When it came to hearing the arguments on whether or not this temporary injunction should be made permanent, he ducked out of the picture and turned the matter over to three other Federal judges, namely, Judges Joyce, Nordlye, and Woodrow, the latter of Omaha. These three judges then went to work and dissolved the temporary injunction, ruling against the original temporary injunction.

Mr. BLACK. How long a time had elapsed between the issuance of the original injunction and the decision of the three judges?

Mr. SHOEMAKER. The three judges made their report on April 5 and the original injunction was filed on the 18th of January.

Mr. BLACK. What happened in that time?

Mr. SHOEMAKER. There was just delay.

Mr. BLACK. Did the State consent to the delay or was it caused by order of the court?

Mr. SHOEMAKER. By order of the court.

Mr. BLANTON. No judge has ever been impeached for exercising discretion or for want of good judgment. The gentleman first must show something that is of a criminal or dishonest nature.

Mr. SHOEMAKER. If the gentleman will permit me to proceed, I will bring plenty of that out.

Mr. Speaker, I ask unanimous consent to insert in the RECORD a brief prepared by the attorney general of the State of Minnesota in answer to the injunction.

The SPEAKER. Without objection it is so ordered.

There was no objection.

Mr. BLACK. Does the brief filed in behalf of the State of Minnesota reflect on the judge?

Mr. SHOEMAKER. No. The gentleman from New York [Mr. BLACK] asked why this took so much time. They are playing for time until the expiration of the time limit of a criminal charge which expires, I believe, in 3 years under Federal law. So they are playing for time there on this proposition to let these bankers get out from under and before the people of the State of Minnesota can get to them.

Mr. BLACK. If they are being prosecuted under a Federal statute, it is not of importance what the State authorities may do. The 3 years' limitation is a Federal limitation. A delay on the injunction might or might not affect any criminal activities against them. The gentleman does not connect up the two statements.

Mr. SHOEMAKER. These are national banks which come under Federal law.

Mr. BLACK. But the gentleman said something about State action.

Mr. SHOEMAKER. This might interfere with the State action also.

May I say this with regard to various other things that this judge has done? Take receiverships for instance.

Mr. BLACK. In reply to a question of the gentleman from Texas, the gentleman was going to say something about the judge's conduct in connection with this matter. Is the gentleman coming back to the question?

Mr. SHOEMAKER. Yes. I may say further that the judge acting in this injunction I believe was influenced by the fact that his wife is one of the substantial stockholders of this corporation. Not only that, but through this bank, the director and the president of this bank, the judge has made it a business to appoint close associates, both in the banks and in railroad companies and various other institutions to the receiverships that take place in the city of Minneapolis, and in that community.

I call particular attention to the Minnesota & Ontario Paper Co. receivership. Here is a paper company that is practically the only independent manufacturer of newsprint in the United States of America. It is the only paper company that is not tied up with the International Paper Co. It is the only paper company in America that the newspaper men can go to and hold the price down and not be robbed by the combine. If they get the Minnesota & Ontario Paper Co. into the hands of the International Paper Co., the paper-manufacturing industry of the United States will be tied up into one of the most gigantic trusts in America.

Mr. SNELL. Will the gentleman yield for a question there?

Mr. SHOEMAKER. I yield.

Mr. SNELL. Do I understand the gentleman to say that all the paper manufacturing industry is associated and affiliated with the International Paper Co.?

Mr. SHOEMAKER. Either directly or indirectly.

Mr. SNELL. I think the gentleman is entirely mistaken in that contention.

Mr. SHOEMAKER. The fact of the matter is that the officers of this paper company have been called in time and time again at the behest of the other companies to try to get them to agree to fix prices on print paper, and so forth and so on.

Mr. SNELL. But the gentleman's statement that they are all allied with the International Paper Co., I am sure, is wrong.

Mr. SHOEMAKER. I said directly or indirectly.

Mr. SNELL. Directly or indirectly, I am sure the gentleman is wrong about that.

Mr. CHRISTIANSON. Will the gentleman yield?

Mr. SHOEMAKER. I yield.

Mr. CHRISTIANSON. Does the gentleman claim that the Blanton Paper Co. of Grand Rapids, Minn., is so connected?

Mr. SHOEMAKER. I am speaking of the big paper companies and not the little companies. I am speaking of the big paper companies that might be able to influence the price upon the market in the United States of America.

Mr. BLACK. It does not make any difference whether this larger paper company controlled all of them or not if it gained control of this company by methods that were improper.

Mr. SHOEMAKER. They would be its biggest competitors.

Mr. CHRISTIANSON. Will the gentleman yield?

Mr. SHOEMAKER. I yield.

Mr. CHRISTIANSON. Is it not a fact that at the hearing held last week, Ed W. Backus, head of that paper company, was charged with having appropriated to his own use $7,000,000 of the assets of this company, now in receivership?

Mr. SHOEMAKER. There were many charges flying back and forth.

Mr. CHRISTIANSON. And is it not the fact that the same Ed W. Backus has been the most mischievous political influence in the State of Minnesota for several years?

Mr. SHOEMAKER. That is a matter of opinion. I am not here either to condemn or commend him.

Mr. CHRISTIANSON. I hope the gentleman is not going to commend him.

Mr. RICH. Will the gentleman yield?

Mr. SHOEMAKER. I yield.

Mr. RICH. In reference to the newsprint industry, since we have changed the tariff the statement has been made by the one in authority under the N.R.A. that the newsprint industry in the future will be discontinued by Executive order.

Mr. SHOEMAKER. I am not interested in the tariff in this speech here or in the Executive order of the N.R.A. That is beside the issue. It is Judge Molyneaux I am talking about. It is not Backus we are trying here but the actions of Judge Molyneaux, and for that reason I rose to impeach him.

Mr. CHRISTIANSON. Will the gentleman yield?

Mr. SHOEMAKER. I cannot yield any further.

This concern was thrown into receivership by this judge granting the petition of a couple of small creditors, and in the same decision under which he threw it into receivership he said that the paper company was solvent but at the same time placed it in a receivership.

Mr. BLACK. Have you a written opinion to that effect?

Mr. SHOEMAKER. Yes.

Mr. BLACK. Why not put that in the RECORD?

Mr. SHOEMAKER. I will.

Mr. BLACK. The gentleman ought to put that in the RECORD at this point.

Mr. SHOEMAKER. With regard to this receivership, his first unlawful act in this step was in granting the petition of a small creditor, trumped up for the occasion, as a basis for the receivership, and in the same decree he adjudged the company as being solvent.

His next unlawful act was in entering into a conspiracy with the Bankers and Bondholders Protective Committee of the Minnesota & Ontario Paper Co. in discrediting the original receivers, thereby forcing their resignation and appointing in their stead R. H. M. Robinson and C. T. Jaffray, both of whom had never had any experience in these lines of business of this company and who, therefore, were unfit for the operation and the administration of that business.

He fixed the salary of Mr. Robinson at $70,000 per annum and of Mr. Jaffray at $30,000 per annum. He fixed the salaries of two firms of attorneys at $51,000 per annum, and fixed the fees for the previous receivers and the local attorneys for the 9 months preceding at $177,000, under the recommendation of Robinson and Jaffray, or a total for 21 months of $328,000. The total for 34 months, including outside attorneys and all expenses for attorneys and receivers, reaches the enormous total of upward of $700,000. This is a pretty juicy melon for a bunch of grafters to split up under the act of a Federal judge, if you please, sitting in high places.

His next unlawful act was in permitting the receivers for the company, appointed by himself, to enter into an agreement in violation of the Sherman antitrust law with competitors in the newsprint industry, under which they agreed, for a consideration, to withdraw all sales efforts from the market and in conspiring with the manufacturers to maintain fixed prices. Losses sustained under this act were estimated at $3,000,000.

Judge Molyneaux, upon the recommendation of Robinson and Jaffray, approved the refinancing of National Pole & Treating Co., under which they presented to note holders one third of the capital stock of the company, valued at upward of $2,000,000, together with commissions paid brokers and other wasteful items in management, which brings the loss on this transaction to approximately $2,500,000.

Then came the sale of the Commercial Appeal, Memphis, Tenn., which was owned by this company, the Minnesota & Ontario Paper Co. The property there was appraised by men who knew the business, by newspaper appraisers. They appraised the property at a value of $5,000,000. This was the Commercial Appeal, a daily paper. Five million dollars was the appraisal made by appraisers of that newspaper, and the receivers in this instance sold the whole thing for less than one and one half million dollars when it had an appraised value and a ready sale at $5,000,000. This sale was made, and after the sale was made the judge approved it and signed on the dotted line.

This has been going on in many instances. He not only let these receivers go out and do as they pleased, but after they have done this they bring the papers and lay them before him and he signs on the dotted line.

The Minnesota Products, another subsidiary of the Minnesota & Ontario Paper Co., was sold at a loss of over $1,000,000. Judge Molyneaux confirmed a contract with the Great Lakes Paper Co. that was recommended by Robinson and Jaffray, under which the company sustained a loss of over $1,000,000.

The International Paper Co. owed the Minnesota & Ontario Paper Co. $175,000.

The International Paper Co. was good and could have paid $175,000, but the receivers were given a settlement for $50,000. In other words, the International Paper Co. lost through these receivers to the amount of $125,000.

The amounts I have read reach a total of $10,000,000. I am now investigating other matters.

I am not interested in the Minnesota-Ontario Paper Co., but I do know that while it has been interested in shady politics, still they were employing thousands of workmen who are laid off as the result of this receivership. They are trying to wreck this institution.

This company has a vast water power and public utilities—400 miles of railroad on the Canadian border—and this property is all turned over into the hands of these connivers.

This man Jaffray, one of the receivers, is one of the best connivers in the State of Minnesota.

He was made president of a company which had defaulted $5,000,000 in bonds. When president he knew where the bonds were located, and he went out and bought up the bonds for little or nothing—in some cases paying only 3 and 5 cents on a dollar. They gathered these bonds together, and when they got into their hands, they went to the R.F.C. and borrowed $5,000,000 on bonds they had practically stolen. That is this man Jaffray.

Mr. MAY. Mr. Speaker, will the gentleman yield?

Mr. SHOEMAKER. I have not the time. The Democratic administration has appointed this man Jaffray to look after the closed banks of the Northwest in that Federal Reserve district. He holds that job, and not only that but he is president of this great banking institution, and he draws down tremendous salaries from these four jobs. He is the receiver for the closed Federal banks, is the president of the bank, is president of the railroad company, and then draws down $70,000 a year as a receiver in this institution. These are the things that are going on in our Federal courts today, and I call specific attention to this judge out there who is not only committing a conspiracy but is compounding a felony in his actions, so far as his judicial conduct is concerned, and so far as the laws of the land are concerned. I have begged for a hearing before the Committee on the Judiciary. I am not criticizing that committee; I know that they are busy; but these things must be corrected, and they must be corrected if we are going to save this country from ruin, for all down through the history of the ages we know the effect of the decisions of judges, and we have come to that point in America today where we have practically no judges who look on the human side of things. They all have the other slant and look on what is known as "property rights" and trample underneath the sacred human rights of man.

Mr. TRUAX. Mr. Speaker, will the gentleman yield?

Mr. SHOEMAKER. For a short question.

Mr. TRUAX. Does not the gentleman think there is one exception to his last statement in view of the mortgage moratorium decision rendered by the Supreme Court of the United States?

Mr. SHOEMAKER. I think they saw the handwriting on the wall and paid attention to it.

Mr. TRUAX. I think the gentleman is right. The great majority of judges are heartless. The people are being sold out, having their property confiscated every day.

Mr. SHOEMAKER. Not only are they heartless, so far as property rights are concerned, but they are heartless so far as human rights are concerned. I sat for months and checked in every man who came into the penitentiary at Leavenworth and wrote up his life history, and I saw them bring before me to check into that penitentiary boys 15 and 16 years of age, and I saw them put them in there with hardened criminals, to make "Pretty Boy Floyds" and gunmen out of them, and that is what they are doing in our jurisprudence in America today. It is a crime and a shame. I do not want to take up very much more time, but I am going to read just a few little excerpts from a letter that I received:

JANUARY 25, 1934.

Hon. FRANCIS H. SHOEMAKER,
Washington, D.C.

DEAR SIR: I have read your attack upon one Judge Molyneaux, of the Federal district court. It is about time that some Congressman should have the "sand in his craw" to flay the many legal reprobates who have been landed on these Federal benches by the most corrupt and vicious powers in our land.

I have been a kind of lawyer for more than 40 years and I have made it a special task to investigate the antecedents of the many scoundrels who have been lodged in these most vital and important positions and which deal with rights and liberties of the people of this land.

The bench of the Federal courts has been the final refuge of the most heartless and perverted legalists that ever cursed a nation. It is well known that the notorious George M. Fullman had the infamous Peter S. Grosscup appointed a Federal judge in Chicago, and we know the record of this scoundrel as such a judge. We know the influence that placed Judge Jenkins upon that bench and we know his record. We know the record of Judge Pollock, of Kansas City, and it is a rotten one, indeed. But why elaborate?

It is imperative that an exhaustive and thorough investigation of the Federal courts should be had in the matter of receiverships handled by these czars of the United States. The light of day should be turned on the ramifications of this branch of these courts, and the results would be astounding. Just cogitate on this fact: The Irving Trust Co. has been a pet of these Federal judges in the way of receiverships. It now has some 5,000 of these estates in its charge, and you know how these estates will be plucked clean by this institution.

The situation at Chicago should be thoroughly cleaned up, and there is rich picking there for an honest investigator. The favoritism that would be developed would shock the Nation if it can be shocked by the revelations of judicial and political depravity.

All of these Federal courts should be put under the magnifying glass and their rottenness exposed.

Mr. RICH. Who wrote that letter?

Mr. SHOEMAKER. Oh, you do not want certain things to go into the RECORD. Everywhere, since my speech here on January 22, which appeared in the CONGRESSIONAL RECORD, from practically every district, from practically every State in the United States, I have been receiving letters, information, telling about what these judges are doing in the various States. I wish the Members of Congress knew how serious this is. If you think it is not so, just get up here and attack a Federal judge and see the response that you get from the general public throughout the United States of America. That is one way to learn. The people are losing their homes, they are being robbed of everything.

There is another deal in Minneapolis, the Foshay deal, where over $150,000 was spent in 1 month for fees handed out to attorneys and receivers.

The Foshay Tower was put into receivership by the Power Trust of the United States of America because Foshay was the only utility man in the United States that employed union labor; and day before yesterday he went to Leavenworth to spend 15 years for the serious crime of employing union labor in putting up his buildings and his utilities. They loaned him money until they got him on a barrel, then they put him into receivership and framed him into the penitentiary for the false sale of stocks, and gave him 15 years. This same judge is implicated in that deal, if you please.

I hope that something may be done and may be done immediately. In fact I demand that action be taken with regard to this judge at once. I know that he is mentally unfit to sit upon the bench; and I know that he is absolutely incapable from the standpoint of legal knowledge. He has practically no legal knowledge and was considered one of the dumbest lawyers in the State of Minnesota before his appointment to the Federal court for the district of Minnesota.

Mr. RICH. Mr. Speaker, will the gentleman yield?

Mr. SHOEMAKER. I yield.

Mr. RICH. The gentleman states that this judge is unfit mentally. Was the gentleman ever examined by physicians to determine his sanity?

Mr. SHOEMAKER. He has been in several sanatoria for mental trouble.

Mr. RICH. Was he ever examined for that particular ailment?

Mr. SHOEMAKER. The doctors handled him; yes. They did not put him in the sanitarium without a doctor.

Mr. RICH. Have they ever given him an examination to determine his sanity?

Mr. SHOEMAKER. They have never given the results to the public; no. They took him to California to avoid that.

The documents referred to above are as follows:

UNITED STATES DISTRICT COURT, DISTRICT OF MINNESOTA, FOURTH DIVISION

NORTHWEST BANCORPORATION, A CORPORATION, PLAINTIFF, V. ELMER A. BENSON, COMMISSIONER OF BANKS OF THE STATE OF MINNESOTA; S. PAUL SKAHEN, COMMISSIONER OF SECURITIES OF THE STATE OF MINNESOTA, AND GARFIELD W. BROWN, COMMISSIONER OF INSURANCE OF THE STATE OF MINNESOTA, ALL COMPRISING AND CONSTITUTING THE DEPARTMENT OF COMMERCE OF THE STATE OF MINNESOTA AND ACTING AS THE SECURITIES DIVISION THEREOF, DEFENDANTS. IN EQUITY NO. 2747. TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE

Whereas in the above-entitled cause a verified bill of complaint for a permanent injunction has been filed and it having appeared from said bill that there is danger of immediate and irreparable injury, loss, and damage being caused to plaintiff before notice can be served and a hearing had thereon unless defendants are, pending such hearing, restrained as herein set forth, for the reason that defendants threaten to proceed immediately and on January 19, 1934, with hearings and further proceedings under orders issued by them under date of November 21, 1933, in the matter of the investigation of the sale of the common capital stock of Northwest Bancorporation, and in the matter of the exemption from the operation of the law regulating the sale of securities of the common capital stock of Northwest Bancorpo-

ration, and in connection therewith to conduct a general examination and investigation of the books, records, papers, accounts, property, business, and affairs of plaintiff; that such injury threatened to plaintiff includes, or appears to include, interruption of and interference with plaintiff's business and the conduct thereof, damage and loss to plaintiff's business and the value thereof, and the subjecting of plaintiff to the hazard of fines and penalties provided in the Minnesota statutes, and the violation of plaintiff's constitutional rights, all as more fully set forth in said bill, all of which injury and damage is irreparable because plaintiff is without adequate remedy at law and for the reasons more fully set forth in said bill:

Now, therefore, take notice that you, Elmer A. Benson, commissioner of banks, S. Paul Skahen, commissioner of securities, and Garfield W. Brown, commissioner of insurance, of the State of Minnesota, all comprising and constituting the department of commerce of said State and acting as the securities division thereof, and each of you in your official capacity and individually, and all of your agents, servants, assistants, employees, and attorneys, and all persons in active concert and participating with you, and who shall, by personal service or otherwise, receive actual notice hereof, are hereby temporarily restrained and enjoined from holding any hearings under or pursuant to those certain orders made and issued by you under date of November 21, 1933, in the name of the department of commerce of the State of Minnesota and entitled "In the matter of the investigation of the sale of the common capital stock of Northwest Bancorporation, order for investigation", and "In re the exemption from the operation of the law regulating the sale of securities, of the common capital stock of Northwest Bancorporation, order suspending exempt status of the common capital stock of Northwest Bancorporation, a corporation", and from proceeding in any way under or by virtue of said orders, or either of them, and from enforcing or attempting to enforce any and all subpenas made and issued, or purporting to be made and issued under and by virtue of said orders, and from procuring or attempting to procure from any court any search warrants to be used for the purpose of obtaining any books, records, documents, writings, or papers of the plaintiff or of any of its directors, officers, agents, or employees; and from instituting or attempting to institute any proceedings for contempt under or by virtue of the issuance or service of said subpenas, and from instituting or attempting to institute any action or proceeding, civil or criminal, under or by virtue of or based upon the making or issuance of said orders or said subpenas, or any of them; and from making public or in any manner disclosing to any person whomsoever any information acquired by examination of any witness or of any of plaintiff's books, records, papers, or accounts under or by virtue of said orders, or any proceedings had or steps taken thereunder, until the further order of this court.

This temporary restraint is on condition that a bond be filed by plaintiff in the sum of $1,000 conditioned upon the payment of such costs and damages as may be incurred or suffered by such defendants as may be found to have been wrongly enjoined or restrained hereby, and upon plaintiff's not issuing or selling, directly or indirectly, any of the shares of its said common capital stock.

It is hereby ordered that the above-named defendants, and each of them, show cause before the court at chambers at the Federal Building, in the city of Minneapolis, Minn., at 10 o'clock a.m., on the 27th day of January 1934, why the temporary relief and other relief asked for in plaintiff's motion of even date herewith should not be granted.

It is further ordered that the temporary restraining order hereinabove set forth shall expire 10 days from this date unless the time thereof be extended hereafter by the court for good cause shown.

Let a copy of this order be served upon each of the defendants within 2 days from the date hereof.

Dated at Minneapolis, Minn., this 18th day of January 1934.

By the court:

JOSEPH W. MOLYNEAUX, *Judge*.

UNITED STATES DISTRICT COURT, DISTRICT OF MINNESOTA, FOURTH DIVISION

NORTHWEST BANCORPORATION, A CORPORATION, PLAINTIFF, *v.* ELMER A. BENSON, COMMISSIONER OF BANKS OF THE STATE OF MINNESOTA, S. PAUL SKAHEN, COMMISSIONER OF SECURITIES OF THE STATE OF MINNESOTA, AND GARFIELD W. BROWN, COMMISSIONER OF INSURANCE OF THE STATE OF MINNESOTA, ALL COMPRISING AND CONSTITUTING THE DEPARTMENT OF COMMERCE OF MINNESOTA AND ACTING AS THE SECURITIES DIVISION THEREOF, DEFENDANTS. IN EQUITY NO. —. NOTICE OF HEARING

To the above-named defendants:

Please take notice that the motion hereto attached will be brought on for hearing at the time and place fixed by the attached order to show cause.

Dated this 18th day of January 1934.

J. B. FAEGRE,
CLAUDE G. KRAUSE,
Solicitors for Plaintiff,
1260 Northwestern Bank Building, Minneapolis, Minn.
G. A. YOUNGQUIST,
F. H. STINCHFIELD,
Of Counsel.

UNITED STATES DISTRICT COURT, DISTRICT OF MINNESOTA, FOURTH DIVISION

NORTHWEST BANCORPORATION, A CORPORATION, PLAINTIFF, *v.* ELMER A. BENSON, COMMISSIONER OF BANKS OF THE STATE OF MINNESOTA, S. PAUL SKAHEN, COMMISSIONER OF SECURITIES OF THE STATE OF MINNESOTA, AND GARFIELD W. BROWN, COMMISSIONER OF INSURANCE OF THE STATE OF MINNESOTA, ALL COMPRISING AND CONSTITUTING THE DEPARTMENT OF COMMERCE OF THE STATE OF MINNESOTA, AND ACTING AS THE SECURITIES DIVISION THEREOF, DEFENDANTS. IN EQUITY, NO. —. MOTION

Now comes Northwest Bancorporation, the plaintiff in the above-entitled cause, and moves this court on the verified bill of complaint filed herein for a temporary injunction, to be effective during the pendency of the above-entitled cause and until the final determination thereof, restraining and enjoining the above-named defendants, and each of them in their official capacity as stated in the title of this cause and individually, and all of their agents, servants, assistants, employees, and attorneys, and all persons in active concert or participating with them, and who shall by personal service or otherwise receive actual notice thereof, from holding any hearings under or pursuant to those certain orders made and issued by you under date of November 21, 1933, in the name of the Department of Commerce of the State of Minnesota, and entitled, "In the matter of the investigation of the sale of the common capital stock of Northwest Bancorporation, order for investigation", and "In re the exemption from the operation of the law regulating the sale of securities, of the common capital stock of Northwest Bancorporation, order suspending exempt status of the common capital stock of Northwest Bancorporation, a corporation", and from proceeding in any way under or by virtue of said orders, or either of them, and from enforcing or attempting to enforce any and all subpenas made and issued, or purporting to be made and issued under and by virtue of said orders, and from procuring or attempting to procure from any court any search warrants to be used for the purpose of obtaining any books, records, documents, writings, or papers of the plaintiff or any of its directors, officers, agents, or employees; and from instituting or attempting to institute any proceedings for contempt under or by virtue of the issuance or service of said subpenas, and from instituting or attempting to institute any action or proceeding, civil or criminal, under or by virtue of or based upon the making or issuance of said orders or said subpenas, or any of them; and from making public or in any manner disclosing to any person whomsoever any information acquired by examination of any witness or any of plaintiff's books, records, papers, or accounts under or by virtue of said orders, or any proceedings had or steps taken thereunder; and from retaining any of plaintiff's books, records, papers, or accounts, including copies thereof and excerpts and notations therefrom, heretofore submitted to or produced before or examined by defendants, their attorneys, agents, servants, assistants, or employees until a final determination and hearing of this cause.

And upon said verified bill of complaint plaintiff further moves the court for a temporary restraining order to be issued forthwith and without notice, restraining the defendants, and each of them, in their official capacities as stated in the title of this cause and individually, and each and all of their agents, servants, assistants, employees, and attorneys, and all persons in active concert or participating with them, and who shall, by personal service or otherwise, receive actual notice of such order, from doing any of the acts specified in the paragraph numbered 1 in the prayer for relief in said verified bill of complaint.

Each of the foregoing motions is made upon all the grounds and for all the reasons set forth in said verified bill of complaint, and the motion for said temporary restraining order is further made upon the ground that defendants threaten and propose forthwith on January 19, 1934, at 10 o'clock a.m., to proceed with hearings and require compliance with the subpenas hereinabove mentioned.

Dated at Minneapolis, Minn., this 18th day of January 1934.

J. B. FAEGRE,
CLAUDE G. KRAUSE,
Solicitors for Plaintiff,
1260 Northwestern Bank Building, Minneapolis, Minn.
G. A. YOUNGQUIST,
F. H. STINCHFIELD,
Of Counsel.

UNITED STATES DISTRICT COURT, DISTRICT OF MINNESOTA, FOURTH DIVISION

NORTHWEST BANCORPORATION, A CORPORATION, PLAINTIFF, *v.* ELMER A. BENSON, COMMISSIONER OF BANKS OF THE STATE OF MINNESOTA, S. PAUL SKAHEN, COMMISSIONER OF SECURITIES OF THE STATE OF MINNESOTA AND GARFIELD W. BROWN, COMMISSIONER OF INSURANCE OF THE STATE OF MINNESOTA, ALL COMPRISING AND CONSTITUTING THE DEPARTMENT OF COMMERCE OF THE STATE OF MINNESOTA AND ACTING AS THE SECURITIES DIVISION THEREOF, DEFENDANTS. IN EQUITY NO. 2747

Brief of defendants—Statement of facts—Introductory

We believe that a statement of facts in their chronological order will give the best possible idea of the situation in this case and that such a statement will be more comprehensible than any other that might be made. Such a statement will show the law under which the Commerce Commission of Minnesota (herein referred to as the commission) acted, the making of the order

for an investigation of the stock sales by Northwest Bancorporation (herein referred to as Banco, by which name it is commonly known), the issuance of subpenas for witnesses and the production of records, and the conduct of the investigation by the commission up to the time of the issuance of a temporary restraining order herein.

In brief, the story will be that of the attempt by certain financial leaders, mostly in Minneapolis, through the Northwestern National Bank of Minneapolis and its president, Edward A. Decker, to establish here a financial empire in the great Northwest. At first the operations were in Minnesota, Wisconsin, Iowa, and North Dakota, and then spread into South Dakota, Nebraska, Montana, and Washington. The plan was to acquire the ownership, and thus the control, of banks, both national and State, in the territory mentioned, by a corporation, the plaintiff Northwest Bancorporation. The scheme for acquisition of the ownership of this stock was in keeping with the bold ideas of control which moved the men behind Banco. They created the corporation, Banco, with no assets and no liabilities, launched it on its course of acquisition, which was successful to the amount of $80,000,000, of bank stocks for which Banco gave only its stock, and then through a series of frauds, misrepresentations, concealment of facts, corporate abuses, payment of dividends and other charges out of capital, stock-selling campaigns, pools, and syndicates of the insiders who controlled Banco, a disregard of sound business and accounting practices, which necessitated the setting up of an entirely new financial structure for Banco, in which the frauds, concealments, dishonesty, and corporate abuses that had preceded were again in turn concealed and which reorganization itself was obtained by fraud and concealment and misrepresentation of facts, many of which constitute violations of corporate law, both civil and criminal, almost ran Banco to the point from which it started, viz, that of having no assets, all of which resulted in losses of tens of millions of dollars to investors. Banco started with nothing, soared to a market value of almost $90,000,000, and has collapsed to almost nothing. It is a story of wrongdoing and base betrayal, which we propose to reveal, not in our own words, but in that of plaintiff's own officers and plaintiff's own exhibits.

The investigation has only been started. There have only been 3 days of hearing. Every fact has been substantiated by evidence. Many facts are still to be proven. Mr. Decker, chairman of Banco and Northwest National Bank, has told his interrogators before the commission time and again that the facts are to be found in plaintiff's records and that he personally does not know. He has stated in his short time on the witness stand that he does not know 117 times. The commission has resorted to plaintiff's records to get the information which it now has. It proposes, with the lifting of the restraining order herein, to search those records for the matters that Mr. Decker does not know. It proposes to explore the realm of "I don't know." The answer "I don't know" repeated so many times suggests a motive for concealment. As the court said in *Gates* v. *Kelley*, 15 N.Dak. 639, 110 N.W. 770, 773:

"Even an untruthful witness will not usually lie without a motive."

Why does not Edward Decker know, on the stand, those things which he ordinarily would know and which it was his duty to know? This, the commission proposes to find out in order to protect the public and perform its duties under the laws of the State of Minnesota.

STATUTE UNDER WHICH COMMISSION ACTED

The statute, laws of Minnesota, 1925, chapter 192, section 19; amended id. laws 1927, chapter 66, section 11; amended id. laws 1934, chapter 408, section 15, so far as here pertinent, is as follows:

"Whenever the commission from information in its possession has reasonable ground to believe that any person within 3 years has sold, or is about to sell, any securities, including securities exempted by section 2 hereof, and that such securities are or were fraudulent or are about to be or were sold in a fraudulent manner, or that such person in such sale or attempted sale of such securities has worked or will work a fraud on purchasers thereof, or that such person in such sale or attempted sale has violated or is about to violate any of the provisions of this act, the commission shall have power to investigate said matters. In any such case the commission shall have power to make an examination and investigation of the books, records, papers, accounts, property, business, and affairs of such person, and to make or cause to be made on its behalf an audit of the accounts, books, and records of such person, and by its order to require such person to permit such examination, investigation, and audit to be made and to require such person to submit to the commission his books, papers, records, and accounts for the purpose of such examination, investigation and audit. If such securities were or are about to be sold for or on behalf of the issuer thereof the commission shall have like powers as against such issuer.

"If any person or issuer shall fail or refuse to obey any order of the commission, which it is authorized under this act to make, requiring such person to permit an examination, investigation, or audit of his books, records, papers, or accounts by or on behalf of the commission, and to submit the same to the commission for such purpose, the district court, upon petition of the commission, subject to the limitations in sections 7 and 10 of article 1 of the State constitution and in articles 4 and 5 of the amendments to the Constitution of the United States, shall forthwith and without notice cause a search warrant to be issued directed to the sheriff commanding the sheriff forthwith to search for and seize the books, records, papers, and accounts of such person or issuer and deliver them to the commission for the purpose of such examination. The petition of the commission filed with the district court, if duly verified and sufficiently specific, or and any affidavit filed in such proceedings may be taken by the court as authority for the issuance of such search warrant; and all proceedings thereunder shall be substantially the same as like proceedings under sections 10537 to 10540, both inclusive, General Statutes 1923. Any books, papers, records, or accounts so seized shall be held by the commission for a reasonable length of time for the purpose of making such examination, investigation, or audit, and shall be then returned to the person from whose possession they were taken, unless otherwise ordered by the court.

"The commission may by summons or subpena require the attendance and testimony of witnesses and the production of books or papers before it relating to any matter as to which it has jurisdiction under this act. Such a summons or subpena may be issued by any commissioner. It shall be served in the same manner on a summons or subpena for witnesses in criminal cases issued on behalf of the State, and all provisions of law relative to a summons or subpena issued in such cases shall apply to a summons or subpena issued under this act so far as applicable. Any commissioner may require any witnesses to be sworn before testifying. Any judge of the district court may, upon application by the attorney general on behalf of the commission, compel the attendance of witnesses and the giving of testimony before the commission in the same manner and to the same extent as before said court.

"A natural person who shall claim the privileges of refusing to testify on the ground that his testimony or evidence, documentary or otherwise, might tend to incriminate or subject him to a penalty or forfeiture, shall not be excused on said ground from attending and testifying before the commission acting under the provisions of this act; but such natural person, having claimed said privilege and having been required nevertheless to testify, shall not be prosecuted or subjected to a penalty or forfeiture for, or on account of, any action, matter, or thing, concerning which he may be required so to testify or produce evidence, except for perjury committed in such testimony (1925, c. 192, sec. 19; amended 1927, c. 66, sec. 11; amended 1933, c. 408, sec. 15)."

In connection with the statute just cited, the court should consider sections 3996–12, Mason's Minnesota Statutes, 1927, which is as follows:

"On all lawful orders of the commission, made without a hearing having been had on the matter thereby determined, or opportunity therefor afforded, the interested person shall have the right within 30 days from the date thereof to demand a hearing on such matter. On any such demand it shall be the duty of the commission to fix a date for a hearing not more than 30 days from the date of such demand. At the time set a hearing shall be had, after which the commission shall make such further order as the facts require and may either vacate, modify, or adhere to, the order theretofore made (1925, c. 192, sec. 12; amended 1927, c. 66, sec. 9)."

THE ORDER FOR INVESTIGATION

A copy of the order for investigation is exhibit "B", attached to the complaint herein. That this order was issued pursuant to the terms of the statute is manifest from the reading of the statute and the order. It naturally follows that if the statute is valid the order is valid.

SCOPE

The investigation is confined to Banco as a holding company. It is not an investigation of individual banks (p. 162).

I. THE HEARING

a. Plaintiff invited and consented to the hearing and submitted to the jurisdiction of the commission

The Banco, by its officers, employees, and attorneys, appeared before the commission pursuant to the order of investigation and subpenas issued for the attendance of the officers and the production of documents. The present complaint is in quite marked contrast to the statements, position, and conduct of plaintiff's officers at the hearing. Mr. Decker, used to doing things in a big way, a great deal like our friend Andy of radio fame, was most agreeable and willing during the hearing, until it appeared that the investigation was to be a real one, in which the real story of Banco was to be told. Then he changed his attitude. The change was gradual—evasions at first, then denials, then seeking refuge in this court from the whole matter.

Mr. Decker started out by saying that he and Banco welcomed this investigation. He was quite emphatic. On page 2 this is shown:

"Q. I notice, Mr. Decker, that you gave a statement to the press in connection with this investigation, that you and your institution welcomed an investigation of this matter in the sale of stock, and I take it that that is the attitude of yourself and your organization?

"A. Yes."

Plaintiff made no objection of any kind at any time in which the commission jurisdiction or right to proceed was challenged. It early indicated that it welcomed the investigation. Time and again it indicated that it had no objection, stipulated as to procedure, arranged for examination of its documents, asked for continuances (which were granted), participated in the proceedings and in all things submitted to and acquiesced in the commission's jurisdiction and its proceedings. At page 45, its counsel, Mr. Benson, in answer to a suggestion that a book be marked

an exhibit, stated, "I don't see any objection." At page 43, he stipulated relative to substituting copies for the originals of certain exhibits. Mr. Decker, at page 48, indicated that the commission is "welcome" to books containing records of certain stock purchases.

That Mr. Decker and his attorneys did not regard this investigation as an invasion of their constitutional and legal rights is further evidenced by testimony given on page 50, when he said, being asked as to certain entries which he stated could be found only in his check book:

"I can have such a statement made from my check book and would be very glad to, if you want it."

Again, when asked about certain records which he apparently did not have with him, he said:

"You tell the attorneys what you want and they can get it for you" (p. 50).

In answer to whether he would produce certain records relative to a certain pool or syndicate formed for the purpose of dealing in Banco stock, he said:

"I would be glad to get it for you" (p. 51).

And on the same page that he would produce certain joint accounts which he kept.

Then, when his examination for the first day was drawing to a close, apparently satisfied so far, when told that he was about to be excused, he said:

"You can have me for another year if you want to" (p. 52).

In the same spirit, when certain correspondence was demanded of him, he said:

"Well, if you give a memoranda of it and the dates or anything to identify it, you are certainly welcome" (p. 54).

Mr. Decker was not alone in this. Mr. Albrecht and Banco's attorneys were just as willing to submit and did submit to the commission's jurisdiction. This is apparent from the evidence of the witness, Albrecht, a vice president of Banco, who testified that he failed to produce certain documents because council told him another witness would be examined relative thereto and expected to have them with him. Thereupon, when asked when the documents would be produced, counsel said:

"Whenever you are ready for them" (p. 92).

Then at pages 93 and 94 it was agreed that the commission could send its men to Banco, where they would be given a room to work in and an opportunity to pick out the documents and exhibits wanted. By this agreement, plaintiff consented to the examination of its papers in its offices, in lieu of subpenas, in order to facilitate the production of exhibits. This is the examination, referred to in the affidavit of Thomson, MacTavish, and Buelow, page 5, paragraph 10, thereof. This is what happened:

"* * * that thereafter arrangements were made by plaintiff's counsel with defendants to permit employees of defendants to come to plaintiff's offices and make an examination of the matters covered by items nos. 1, 2, and 3 in said exhibit A, and thereupon and thereafter beginning with the morning of January 12, defendants sent to plaintiff's offices certain of its employees who remained, except as hereinafter stated, at plaintiff's office in examining said documents throughout the working hours of each day (Sunday excepted) until the time of the filing of the bill of complaint herein and the issuance of the restraining order; that during said period of time there were always three employees of defendant engaged in plaintiff's offices in the examination of said records, some of the employees being relieved from time to time by other employees of defendants likewise engaged; that during said period said employees were engaged in making and did make and take with them from the offices of plaintiff extensive notes and excerpts from and copies of such records of plaintiff; * * *."

So far all was well. But as the testimony gradually and surely commenced to reveal the real financial condition of Banco and the fraud, the misrepresentation, the concealment of the true financial status, the facts making necessary Banco's financial reorganization and all the rest of it, Banco commenced to change its attitude. It did not want the investigation to go on. It asked for continuances, which the commission granted. Its attorneys took more part in the proceedings. The proceedings became a trial with the usual objections, stipulations, arguments, interruptions, explanations, and so on. Whole pages are filled with remarks of plaintiff's counsel. It would take too long to state what happened in detail. We call the court's attention to the record, where these matters other than those which we have mentioned are noted as indicated below:

Page 2, Decker, welcomes investigation public press, before hearing. Production of exhibits.

Page 43, stipulation, Attorney Benson.

Page 45, stipulation and no objection to take letters in exhibit 4.

Page 48, Decker indicates commission is "welcome" to books of account—re his stock purchases.

Pages 49–50, Benson takes part in examination.

Page 50, "I can have such a statement made from my check book and would be very glad to, if you want it."

Page 50, "You tell the attorneys what you want and they can get it for you."

Page 51, Decker agrees to produce "pool" or "syndicate" correspondence, also joint accounts.

Page 52, when commission is ready to excuse Decker, "You can have me for another year if you want to."

Page 54, in answer to demand for correspondence: "Well, if you give a memoranda of it and the dates or anything to identify it you are certainly welcome."

Page 92, Witness Albrecht fails to produce certain books as per subpena on Attorney Benson's advice, who, in answer to question if and when he would produce them, said: "Whenever you are ready for them."

Page 93, Albrecht—id., re: A. G. Becker & Co. documents.

Pages 93–94, Albrecht—arrangement was made for auditor to examine and go through books, through Watson, Skahen, and Attorney Benson.

Arrangements were made by Banco voluntarily for an examination of its books, papers, and records. This is referred to in the affidavit of Thomas, MacTavish, and Buelow, at pages 5 and 6 thereof, as follows:

"* * * that thereafter arrangements were made by plaintiff's counsel with defendants to permit employees of defendants to come to plaintiff's offices and make an examination of the matters covered by items numbered 1, 2, and 3, in said exhibit 'A', and thereupon and thereafter, beginning with the morning of January 12, defendants sent to plaintiff's offices certain of its employees who remained, except as hereinafter stated, at plaintiff's office in examining said documents throughout the working hours of each day (Sunday excepted) until the time of the filing of the bill of complaint herein and the issuance of the restraining order; that during said period of time there were always three employes of defendant engaged in plaintiff's offices in the examination of said records, some of the employees being relieved from time to time by other employees of defendants likewise engaged; that during said period said employees were engaged in making and did make and take with them from the offices of plaintiff extensive notes and excerpts from and copies of such records of plaintiff;

Plaintiff participated in the hearing:

Page 100, production of ledger exhibit 18—Attorney Benson. Stipulation by him it is the ledger.

Page, 99, participation in hearing by plaintiff's attorneys.

Page 101, participation in hearing by plaintiff's attorneys.

Page 117, participation in hearing by plaintiff's attorneys.

Page 120, participation in hearing by plaintiff's attorneys.

Page 121, participation in hearing by plaintiff's attorneys.

Page 126, participation in hearing by plaintiff's attorneys.

Page 127, participation in hearing by plaintiff's attorneys.

Page 146, participation in hearing by plaintiff's attorneys.

Page 147, participation in hearing by plaintiff's attorneys.

Page 156, December 30, 1933.

Pages 156, 233, 249–50, request for continuances.

Page 161, cooperation of commission with Banco. Use of books.

OFFICERS

Page 166, Faegre (concerned with finding suitable working plans); Watson; Skahen.

Page 166, Faegre, concerned only as to flexible arrangement.

Page 172, Stinchfield, attorney.

Page 174, O'Brien, attorney.

Page 199, Krause, stipulation for use of copy of Decker.

Page 200, Krause.

Page 202, Stinchfield, objecting.

Page 206, Stinchfield stipulates.

Page 206, Stinchfield stipulates that Decker could cancel contract.

Page 206, Krause, state who could cancel.

Page 210, Stinchfield.

Page 211, Krause.

Page 212, Stinchfield.

Page 212, Stinchfield.

Page 213, Stinchfield, three times.

Page 214, Stinchfield, three times.

Page 215, Stinchfield, two times; objection; explanation.

Page 216, Stinchfield, three times.

Page 217, Stinchfield, five times.

Page 218, Stinchfield.

Page 218, Krause, three times, offers checked over envelopes and asks which are wanted.

Page 219, Stinchfield, six times.

Page 222, Stinchfield.

Page 222, Krause, three times, produces records.

Page 223, Krause, two times; asked to take original syndicate arguments.

Page 224, Krause, asked to take original syndicate.

Page 225, Stinchfield, two times, examines.

Page 226, Krause, answers.

Page 226, Krause, records produced.

Page 227, Krause.

Page 227, Stinchfield, three times.

Page 228, Stinchfield.

Page 229, Stinchfield, two times.

Page 232, Stinchfield.

Page 233, Faegre.

Page 234, Faegre.

Page 235, Stinchfield.

Page 236, Krause.

Page 237, Krause.

Page 238, request for postponement.

Page 241, Krause, continuance.

Page 244, Krause.

Pages 249–50, granted continuance and adjourned to January 19 upon understanding and agreement commission's men could examine books of Banco.

When it commenced to be definitely established that Banco's stock was and is fraudulent, that it was and is being sold in a

fraudulent manner, and that the sale thereof has and will work a fraud on purchasers thereof, and that Banco was violating the blue-sky and other laws of Minnesota, and even of the United States, and that the frauds amounted to millions of dollars, Banco wanted to end the investigation. It became imperative for Banco to end it. It changed its attitude. No longer did it offer to cooperate. No longer was it willing to have its records examined. Decker was no longer willing to be witness for 1 year if wanted, nor was he willing to be a witness at all. The put-on bravado was gone. Banco ran for cover. Banco ran for the Federal court. Things which it agreed to and found no objection to it now called names and denounced as violations of its constitutional rights—deprivation of its rights without due process of law and other than by the laws of the land, unlawful search and seizure, and other heavy-sounding names. It comes to this court, too, without having demanded a hearing under section 3996–12 and without any objection at all before the commission.

So far we have told only about Banco's appearance and submission to the commission's jurisdiction and its attempt to run out of the jurisdiction of the commission into the protection of an injunction of this court. Now we will tell why Banco wants an injunction to stop this investigation. In doing this we must tell the facts about the organization of Banco, its stock selling, etc.

II. THE ORGANIZATION OF BANCO

a. Banco's birth and growth

The idea of organizing Banco "originated in 1928 with certain officers and directors of the Northwestern National Bank" and was discussed by them from time to time in the bank (p. 3). Mr. Decker stated (p. 4) that 60 or 90 days after the matter was first thought of and discussed it took definite shape in the form of perfecting an organization. This was in the latter part of 1928 and early in 1929 (pp. 11–12). The matter was first discussed among the officers as individuals, and later it was taken before the directors of the Northwestern National Bank:

"Q. And there it was discussed and laid before them?

"A. Yes.

"Q. With the idea, of course, predominating that such a company should be formed?

"A. Eventually, yes."

Banco was to be a holding company "which would hold the capital stocks of various financial institutions throughout the Northwest", not operating them directly but owning stocks in them, generally a controlling interest, as its own assets, managed by itself. Mr. Decker and others acted to formulate a definite plan to submit to the board of directors, but it is claimed that no corporate action was ever taken by the Northwestern National Bank (p. 8). The purpose of the corporation was "to absorb by ownership the capital stocks of the northwestern banks" and for no other purpose. Mr. Decker stated this in so many words (p. 10).

After the plan was conceived Mr. Decker and his associates immediately commenced to carry it into execution. In common with the individuals which brought it into being, Banco came into this world possessed of nothing. It had no assets and no liabilities; nor did it have any until after it had acquired the stock of the first group of banks. Mr. Decker so testified at page 97. It had nothing except its corporate stock; and this it had no right to issue except for value received in exchange. Possessed of nothing except its stock it proceeded to acquire assets by exchanging a portion of that stock for the stock of certain leading banks of the Northwest. The stockholders of the Northwestern National Bank, Minneapolis, First National Bank of La Crosse, Wis., First National Bank of Fargo, N.Dak., and First National Bank of Mason City, Iowa, transferred their stock to Banco in exchange for stock in Banco (p. 10). Mr. Decker testified that at that time Banco "had no assets and had no liabilities" (p. 11). He did not know whether qualifying shares for directors had been issued (p. 97). This exchange of stock was done pursuant to "A Plan and Deposit Agreement", dated January 8, 1929, commissioner's exhibit no. 1. It was agreed that Banco stock should be exchanged at its par value, $50 per share, and that the other stocks, for the purpose of this exchange, should be valued as follows:

Northwestern National Bank, Minneapolis	$400
First National Bank, Fargo, N.Dak	310
First National Bank, Mason City, Iowa	300
First National Bank, La Crosse, Wis	

Banco gave $23,805,000 of its stock for the stock of four banks above named. These banks had tangible assets as follows:

Capital stock	$6,750,000
Surplus	4,305,000
Undivided profits	2,211,033
Total	13,266,033

The stock was issued by Banco as follows (pp. 24–27):

Northwestern National Bank	$20,000,000
First National Bank, Mason City	1,500,000
First National Bank, Fargo, N.Dak	930,000
National Bank of LaCrosse	1,375,000
Total	23,805,000

In this manner Banco was launched, encumbered with $10,539,000 of bonus, water, or goodwill, whatever you may choose to call it. Ten million five hundred and thirty-nine thousand dollars is the amount which Banco paid for the stocks of the affiliate banks over and above the value of their tangible assets. That deal made Banco stock worth $28.75 on a tangible-asset basis, though its par value was $50 per share. Mr. Decker said that the amount of the exchange basis over and above tangible value was in reality going-concern value or goodwill. However this may be, this amount was not shown on the books of the Banco as going-concern value or goodwill, but on the contrary it was included as assets in "stocks and bonds", and it was thus shown in statements which were furnished to the stockholders for their information and to the public as a basis for inducing it to buy Banco stock (pp. 35–37, 41–42). In short, Banco set up on its books as the cash value of the acquired stock what those stocks cost it in its own stock. In figuring this cost the par value of Banco stock, $50, was taken instead of its real value in terms of tangible assets, $28.75. Thus there was entered as assets stocks and bonds in the amount of $23,805,000 instead of $13,266,000, without a separate entry of $10,539,000 for goodwill, bonus, or water. As heretofore stated, no separate entry was made on Banco's books to show that there was nothing tangible behind these $10,539,000 (pp. 26, 28–29).

As early as January 28, 1929, within a few weeks after Banco was organized (pp. 60–67), it laid plans for a stock-selling campaign and the acquisition of still other banks. Without any assets or earnings out of which to declare dividends it declared a dividend of 45 cents per share on that day, on the condition that "the earnings of the company be sufficient therefor", which it referred to in its application for registration of securities filed with the State securities commission on February 14, 1929. Can there be any question but that this was for the purpose of making Banco stock attractive to purchasers? It registered for sale at that time 600,000 of its shares at the par value of $30,000,000. If Banco stock had an actual value of $28.75 as the testimony shows, according to Mr. Decker's testimony (p. 26), each of the purchasers paid $21.25 for bonus or water for each share of stock and in the aggregate the purchasers of this stock which was offered to the public brought $12,750,000 of bonus or water for which they received no value at all.

It is significant that Banco restricted the right of sale of Banco stock, exchanged for other stock, for a period of 6 months after the exchange so as to prevent the owners thereof from disposing of it in competition with stock sold by Banco (pp. 28–29). This was done in the case of all stocks that were issued in exchange for other stock. The purpose is obvious: To allow Banco to control prices while the big stock sale was on.

b. The acquisition of the Midland National Bank & Trust Co.

Operating along the lines indicated, prior to September 1929, Banco commenced negotiations for the acquisition of the stock of the Midland National Bank & Trust Co. of Minneapolis. That stock was acquired some time in September 1929. At that time Banco stock was quoted at about $100 per share. The Midland National Bank had tangible assets of $1,900,000, and its stock sold on a basis of about $190 at $100 par (pp. 56–65). Banco gave 50,000 shares of its stock of the then market value of $5,000,000 for the stock of the Midland National Bank & Trust Co. of the then market value of $1,900,000. In other words, a bonus of over $3,000,000 was paid for the Midland stock in a deal involving $5,000,000 (p. 65). The representatives of Banco did not tell the Midland people that a share of Banco stock at that time had less than $28.75 of tangible assets behind it. In fact, Mr. Decker, who represented Banco, said that Banco stock was going still higher, and used the ostensible market value of Banco as a bait to lure the Midland people on—that he was, in effect, giving them $5,000,000 for $1,900,000. This is shown by the testimony of Mr. Mills, a former president of Midland National Bank (pp. 66–67), as follows:

"Q. And as a matter of fact, Mr. Mills, isn't it true that the thing which induced you as the president of Midland National Bank to accept share for share of Northwest Banco stock was the fact that that stock had an ostensible market value at that time of what it was quoted at?

"A. Yes.

"Q. And that was accepted by you as being the worth and value of Northwest Bancorporation?

"A. Well, that is what it was selling at.

"Q. In obtaining the consent of your stockholders to this exchange, Mr. Mills, I will ask you if it isn't true that the then existing sale price of quotations of Northwest Banco stock was in effect the determining factor in getting them to exchange?

"A. Yes.

"Q. The fact that it was then selling and that they ostensibly were obtaining stock worth in round numbers $100 was the determining thing when making the exchange; is that not true?

"A. Yes."

Banco exacted from each of the stockholders of Midland an agreement in writing to withhold the Banco stock acquired in the exchange, from the market for a period of 6 months.

The record upon this subject has not been made up in full by reason of the restraining order which has been issued in this matter by this court, but certain significant facts have been developed which would indicate that other stocks were acquired on the same basis. We will show later in the statement of facts that it was necessary to reduce the capital and surplus of Banco from $39,000,000 to $29,000,000, of which $25,000,000 was capital, by reason of the presence in the capital of over $39,000,000 of admitted bonus or water valuations, together with something like $14,000,000 of losses which the company sustained in various ways. It seems to us that the Commerce Commission of Minnesota has an important duty to discharge in this for the most part

unexplored field to find out how this water and bonus got into the capital structure of Banco; who the victims were; how they were victimized; what frauds were practiced on them; and what tricks, concealments, and misrepresentations had been made in order to sell this stock at these grossly excessive prices. These facts also reveal quite fully and the inference from them is irresistible that the sale of this stock was a fraud on the public and that this matter should not rest until the Commerce Commission of Minnesota has done its full duty with reference to it under the laws of the State.

III. THE PAYMENT OF DIVIDENDS

The story of the dividends declared and paid by Banco is on a par with that of the acquisition of the stock of the affiliate banks. Just as tens of millions of dollars of bonus or water were put into the corporate structure by the stock acquisition transactions of Banco, so too, millions of dollars of dividends were declared and paid when there were no earnings or very small earnings out of which they could properly or legally be paid. These dividends were paid out of capital. The fact that there were no earnings was concealed from the stockholders and the public. Not only this, but there were affirmative misrepresentations by Banco that its earnings were several times in excess of dividend requirements. One cannot read the record in this case without asking himself how long the officers of Banco hoped to operate on this basis without having a day of reckoning. What did they gamble on to save them from a fate that was absolutely certain?

One of the most significant transactions is the declaration of the dividend of April 1, 1929, at the directors' meeting on January 28, 1929. A dividend of 45 cents per share payable April 1 was declared. At that time the directors of Banco did not know on how many shares of stock the dividend would be payable because not one of the affiliate banks had then agreed to come in; nor did they know whether there would be $1 of income with which to make the payment. Banco did not know what banks would come in. It did not know what assets the company was going to have out of which to pay these dividends (p. 67). This authorization of a dividend at best was purely a hopeful guess, or perhaps far worse, a deliberate fraud to make the stock seem attractive. As a matter of fact the proposal to the affiliate banks to come in was not made until the next meeting of the board of directors, held on February 19, 1929 (exhibit 15, p. 86). The affiliate banks were actually taken in on March 19, 1929, and their stockholders were charged 35 cents per share as the amount of the accrued dividends on Banco stock issued to them. At that time, too, it is well to remember Mr. Decker's testimony that Banco had no assets except the stocks which it had acquired from the affiliates (p. 97). On April 1, 1929, when the first dividend was paid, the following facts appear from the books of Banco:

April 1, paid on 551,501 shares at 45 cents quarterly dividend	$248,175.45
Debtor balance	248,175.45

Well knowing that the hopeful anticipations of January 28, 1929, had failed to materialize by April 1 and that the April 1, 1929, dividend had to be paid entirely out of capital, Banco, at its June 1929 meeting, declared a dividend of 45 cents per share payable July 1, 1929. Its books show the following:

Interest received	$67,318.44
Profits—sale of stock	873.15
	68,191.59
Less expense	2,436.95
Total	65,754.64
Dividend on 551,501 shares, at 45 cents per share	248,175.45

This dividend was paid as follows: $65,754.64 out of money on hand and $182,420.81 out of capital.

At the directors' meeting of March 26, 1930, Banco declared a dividend of 45 cents per share, payable on April 1, 1930. The amount of the dividend voted was $742,000 and the earnings of the company were actually only $11,000 (pp. 106, 103–106, 106–108).

At the time when this dividend was declared the directors had before them an untrue letter from one of their officers representing that Banco was earning money.

The thought occurs, why did the officers and directors of Banco have a lying letter before them as the basis for declaring a dividend? They must have been advised of the true status of their corporate affairs. They could not deceive themselves. Was it the defense prepared in advance in case there was a criminal prosecution? Was it both the basis and justification for wrongdoing? What was the real reason? What possible excuse could there be for Thomson's writing such a letter and the officials of Banco acting on it?

In line with the accustomed and usual practice in Banco the directors on June 25, 1930, declared another dividend of 45 cents per share, payable on July 1, 1930. For that period, at that time, the expenses and dividends of Banco were $105,863 in excess of earnings (pp. 106–107). Mr. Decker, as a witness, was asked:

"Q. I call your particular attention to the last line of that report and ask that you read that to the commission?

"A. It shows expense and dividends in excess of collected earnings, $105,863.06.

"Q. So that at the time when this dividend of 45 cents per share was declared you had before you a report of your general manager showing that at that time expenses and dividends in excess of collected earnings had then been disbursed of $105,863.06, didn't you?

"A. Yes, sir."

Mr. Decker then stated that the dividend of July 1, which was at that time declared, amounted to $746,340.75 more (p. 107), which must have left a deficit of $852,203.81.

Pursuing the same course of practice, the directors of Banco on September 11, 1930, declared a dividend of 45 cents per share, payable on October 1, 1930. At that time, according to Mr. Decker's testimony, the expenses and dividends were $192,671.13 in excess of collected earnings. At that time (p. 108) the directors of Banco had before it a letter written by its president, J. C. Thomson, in which he stated that the earnings of Banco were $3.15 per share, or one and three fourths times the annual dividend requirement (pp. 108–110). That this letter was absolutely false is apparent from what we have stated. We will give this letter particular attention infra.

Pursuing the same practice, the board of directors of Banco on December 11, 1930, which was 26 days after the Thomson letter was written, declared a dividend of 45 cents per share, payable on January 1, 1931. At that time Banco's books showed a deficit of $235,513.45. The financial report of Banco is shown on exhibit 15, page 171. Mr. Decker was questioned relative to this as follows:

"Q. I call to your particular attention and ask that you read the statement therein contained as to whether or not at that time you had a deficit or a surplus from your earnings when you voted that dividend?

"A. Shows a deficit of $235,513.45.

"Q. And that was 26 days after this letter of Mr. Thomson's dated November 15, 1930, went out recommending this stock, was it not?

"A. Yes."

So, too, Banco at its directors' meeting on March 12, 1931, declared a dividend of 45 cents per share, payable April 1, 1931. At the time of the directors' meeting they had before them a statement, prepared 12 days previous, on February 28, 1931, showing a deficit of $15,087.15. The amount of the dividends declared was $754,515. Mr. Decker was questioned about this and testified:

"Q. So that at the time when you voted this dividend to be payable April 1, amounting to, I believe, $754,515, your company showed a deficit in earnings of $15,087.65, is that not true?

"A. Yes; I would say deficit on collected earnings.

"Q. On the statement of February 28 it shows a deficit, doesn't it. That is the way it is worded, is it not?

"A. Yes, sir."

On September 10, 1931, another dividend was declared of 45 cents per share, payable on October 1, 1931 (p. 112). The amount of this dividend was $1,491,103.35. There was a deficit at the time the dividend was declared of $192,306.75 (pp. 112–113).

There are some corporate practices of Banco in connection with the declaration of dividends that should be thoroughly investigated. Unless this is done no one will know what the actual financial situation of the company is. Prior to 1931 the practice had been for Banco to credit its dividends and incomes received without making any provisions for losses sustained. This is quite clearly shown by the audit of Peat, Marwick, Mitchell & Co., Commissioner's Exhibit 21. This was admitted, although he tried to evade it, by Mr. Decker in the following testimony:

"Q. Now then, Mr. Decker, according to that then, prior to December 31, 1930, your corporation had been crediting itself with the dividends received and making no provisions for the losses sustained by any of your operating units in your statement as to earnings according to this statement, that is correct, isn't it?

"A. I don't know.

"Q. I say that is in there, isn't it? That is in their statement?

"A. Yes.

"Q. Yes. Now, Mr. Decker, at that time you charged off to what was known as "an accrual basis"; that is, you took credit for all the earnings of the subsidiaries and charging off all the losses. That is the way it was set up from this point?

"A. You mean the books of the corporation or books of the individual banks?

"Q. On the books of the corporation you took credit for all subsidiary earnings and charged off losses, taking the net from that point on. That is what they say?

"A. I don't think the books of the corporation reflected charge-offs in the individual banks but only on their own affairs.

"Q. Well, let us read this and see: 'Prior to December 30 the income from the companies from investment in banks and other affiliated companies was restricted to dividends received therefrom and provision was not made for losses sustained by any of the units.' That is for losses sustained by your unit bank, isn't it?

"A. You mean on the books of the company?

"Q. They never had done that prior to 1931?

"A. I presume that is correct" (pp. 115–116).

Illuminating, too, are many of the other facts disclosed in the record relative to the condition of the company when dividends were declared. On April 1, 1930, Banco had outstanding 1,649,225 shares of stock. The auditor's report showed the net income, without any deductions for losses sustained, of $2,914,000. Mr. Thomson had gotten out a letter for Banco in which he stated the fact to be that the earnings were $3.83 per share after charge-offs and recoveries had been made. If this letter were true, the income of Banco for that year would have been in excess of $5,000,000, which is obviously not true. He misrepresented the

income to be over $2,100,000 in excess of what it actually was. The earnings were approximately $2,100,000 less than claimed (p. 118).

The auditor of Banco, in his report of December 31, 1929, covering a period of Banco from its inception to that date, stated that the net income of Banco was $2,428,559.22. The annual report to the stockholders misstated and misrepresented the fact. It stated that the earnings of Banco were $4.50 per share. At that time there were outstanding 1,606,993 shares. If the report of Banco was correct the income for the year was $7,243,153.50. It was false and overstated the income in the amount of $4,814,494.28.

This statement was made in language which would deceive the most wary when off his guard. It appeared very innocent and matter of fact.

In 1930 the report of Banco to its stockholders contained the following:

"Net operating earnings of the group applicable to Northwest Bancorporation stock ownership were equal to $3.87 a share on 1,673,912 shares outstanding. This compared with $4.50 a share on 1,606,993 shares for 1929. Net earnings for 1930 after current charge-offs were equal to $3.20 a share. Dividends paid during the year amounted to $1.80 a share."

Banco's auditor reported net income for the year in the sum of $2,914,110.63. If the statements in the report to the stockholders were true, the income of Banco was $6,474,510. It is false and overstated in the sum of $3,560,399.38.

The directors of Banco were not content to falsely state the facts in their annual report as indicated, but they added to it their own very significant interpretation, which is as follows:

"A. Operating earnings applicable to stock of Northwest Bancorporation, after eliminating the proportion applicable to minority interests in affiliated institutions, were $5,741,625.70, or $3.43 per share, as compared with $3.87 per share in 1930. Dividends of $1.80 per share were paid during the year, amounting to $3,004,936.20. Considered from another viewpoint, these earnings were equal to 6.86 percent on the par value of the capital stock of Northwest Bancorporation outstanding, as compared with 7.74 percent for 1930. These figures clearly demonstrate the ability of the corporation to maintain a liberal margin over a reasonable dividend under normal business conditions. Officers of the corporation intend to maintain such policies as will insure sound institutions, and they will be guided as to the amount to be distributed in dividends during these abnormal times by a full regard for the ultimate good of the stockholders" (p. 125).

It appears from the testimony of Mr. Decker that instead of there being operating earnings, as claimed in the amount of $5,741,625.70, in 1930, there was an actual deficit of $4,461,029.72. The audit of Peat, Marwick, Mitchell & Co. refers to this, as follows:

"A. We believe consideration should also be given to the extent to which dividends have been paid out of capital surplus, as computed for income-tax purposes. The computation for this purpose would differ from that for corporate purposes. However, to the extent paid out of capital surplus, such dividends constitute a nontaxable distribution, and, in our opinion, should be reported to the Treasury Department in order that the liability of stockholders for surtax may be correctly determined" (p. 127).

This report points out that it is claimed that such payment of dividends out of capital may be authorized under the laws of the State of Delaware. It also points out that the capital surplus of the company includes an amount of $9,378,707.60, resulting from the valuation placed upon investments in banks and affiliated companies; that such payments may be correct from an accounting point of view, but doubtful from a legal point of view, and the auditors state, "We believe that consideration should be given to the question as to whether this sum is available for dividends under the Delaware law." The report shows that dividends paid out of capital credited to surplus amount to $9,378,707.60 (p. 128). Exhibit 14, which is the annual report sent out to the stockholders on March 1, 1932, contains a copy of the letter from the auditors and a copy of their balance sheet, without the comments and explanations, showing that dividends were paid out of capital. The effect of the exhibit is to lead one to believe that the auditors in all things approved the financial practices of Banco, whereas the truth is that they quite strictly disapproved them, and suggested to Banco that they have the advice of counsel as to the corporate practices indulged in by the company. As a result of the business practices of Banco it became more and more involved. It became necessary to charge off losses in the amount of $13,207,591.62, consisting of the following items (p. 130):

Net loss on loans	$6,100,759.90
Net add to reserves: $1,285,534.04, less $336,543.93	947,990.11
Total	7,049,750.01
Reserve for loss on loans	3,152,905.41
Dividends paid by Banco	3,004,936.20
Total charged off	13,207,591.62

In its report to its stockholders Banco reported earnings for that year of $5,741,000 but did not inform them that it had charged off these items in excess of $14,000,000. At page 131 Mr. Decker was interrogated about this, and the testimony is as follows:

"Q. What I am looking at, Mr. Decker, is whether the statement that you furnished to your stockholders give to them the true facts of your operations or deceives them?

"A. Well, it certainly wasn't intended to deceive them."

At the bottom of page 131 and at the top of page 132 he testified as follows:

"Q. And so, while you included this portion of Peat, Marwick, Mitchell & Co.'s report showing $5,741,000 earnings, you neglected to include the other half of it, didn't you?

"A. Not if there were charge-offs. It certainly reflects in that net to the shareholders."

Mr. Decker further admitted on page 132 that Banco had not told the shareholders about the losses sustained. He admitted, however, that the reports of Banco to the stockholders had shown earnings as follows:

Earnings shown by reports:

1929	$7,450,000
1930	6,774,000
1931	6,014,168
Total	20,238,168

The company's auditor's figures show the deficit on this account for 1931 to be $4,461,000.

In the face of these figures it is significant that Mr. Decker did not admit that Thomson's letter had been written, stating that the earnings were $3.15 per share. We call the court's attention to the testimony of Mr. Decker on page 135 in which he did some very artful evading.

These irregularities made necessary a change in the financial structure of Banco by setting aside a reserve of $14,000,000 to cover losses. Nevertheless, after this $14,000,000 had been so set aside as a reserve for losses in 1932 the directors of Banco at its November meeting in 1932 declared another dividend of 45 cents per share, payable on January 1, 1933 (p. 146).

Why such a dividend was declared no one on the outside can know with certainty. It probably was to reassure the public as to the financial strength of Banco and thereby keep the price of its stock at a higher level.

Mr. Decker asserted that these practices were pursued on the advice of attorneys. He said:

"We got an opinion from all the attorneys."

We expect to discuss the law of Delaware relative to the matter and why it was necessary to get an opinion from all the attorneys. This is a matter that deserves separate and special treatment, and it shall have it.

What has been stated has been revealed in the short time that the investigation has been in progress in spite of the evasions and denials of Mr. Decker. It is reasonable to believe that if a restraining order had not been issued further disclosures might have been made. We believe that such disclosures would be for the benefit of the public. We believe that if the Minnesota Commerce Commission secures this information it can and will take many measures to protect the public in transactions growing out of Banco stock. There is a great field yet to be explored before all the facts are fully developed and disclosed. It is the duty of the commerce commission to pursue this investigation. It is for the legal protection of the public with reference to all matters of this character, and the public is entitled to receive that protection, unhampered by the restraining order of this court.

IV. THE REDUCTION OF BANCO'S CAPITAL STOCK AND THE SETTING UP OF A NEW FINANCIAL STRUCTURE OF BANCO

The day of reckoning for Banco's corporate irregularities and abuses finally came. It seems to us that it did not require the abilities of a prophet to foresee and to foretell what actually happened. Banco was a house built upon the sands. Into its very foundation went tens of millions of dollars of water and bonus values. A capital structure resting upon such a foundation could not stand. That it was bound to collapse was a certainty. The price paid by Banco for stocks which it acquired was $39,394,355.36 in excess of the net tangible assets represented by these stocks. Mr. Decker admitted this in so many words at page 136. His testimony is:

"Q. I call your particular attention in 'commission's exhibit 25, page 11, 'Purchase price in excess of net tangible assets, $39,394,355.36.' That is correct, isn't it?

"A. I presume so."

At that time Banco had on its books a capital of approximately $80,000,000 and a surplus of about 9 or 10 million dollars (p. 136).

In explanation Mr. Decker said:

"It was never claimed—never thought there was $80,000,000 of tangible assets" (p. 137).

He stated that the bonus or water was carried as an investment. While it is true that Mr. Decker at first refused to admit that the carrying of the $39,000,000 of bonus and water value was not "in conformity with conservative accounting methods" (pp. 138–139), he was compelled to admit that this was the fact later when the question was put to him point-blank, and he testified:

"Q. I take it also, then, Mr. Decker, that prior statements had not been in the interests of conservative accounting, had they?

"A. I wouldn't say so; no" (p. 144).

The carrying of over $39,000,000 of bonus or water value and the losses of approximately $14,000,000, together with the payment of dividends out of capital in an amount exceeding $9,000,000 (pp. 127–128) finally had to come out of the financial structure of Banco. This was necessary in order to make the actual value of Banco's stock approximate, in some degree, the actual value of its tangible net assets. It was necessary, however, in setting up this new financial structure, not only to wash out the sins and abuses of the past but also to conceal them from the stock-

holders of the company and the public. Public absolution would not do in a case of this kind. It had to be done in secret and covered up by misrepresenting the facts and by deceiving the stockholders and the public. The plan submitted to the stockholders was outlined in a letter written by Mr. Thomson, bearing date November 14, 1932. This letter was drawn so as to accomplish the purpose which Banco's officers and directors had in mind. Thomson had written other letters and had demonstrated an ability in the fine art of letter writing that was necessary to accomplish the purposes which were now needed in the setting up of this new financial structure of Banco. Mr. Thomson made a number of suggestions and statements in his letter, all of which were calculated to and did accomplish these purposes. They are:

1. The officers and executive committee of Banco "have discussed informally plans for making certain changes in the capital structure of the corporation. Particularly, at this time we had in mind making changes that would reflect more definitely in the corporation's statements the net tangible asset value of its stock" (p. 140).

2. He calls attention to the fact that it has been the "policy, as shown by the annual report of 1931, to give as full information as possible to our stockholders and to set up our financial statements so that they can be easily understood", and also that the proposed changes would effect certain savings in franchise taxes (p. 140).

3. That 2,000,000 shares of stock without par value be issued instead of the proposed 6,000,000 shares of the par value of $50. This proposed change, he says, would be more in keeping with the corporate requirements than the previous arrangement (p. 141).

4. "The purpose of this letter, therefore, is to set forth as clearly as possible all of the factors that were considered in the formulation of this plan" (p. 141).

5. "Upon examination of our various annual reports issued in the past, you will note that heretofore investments in capital stock of banks and other affiliated companies have been carried at a figure which includes goodwill. It now is proposed, in the interest of conservative accounting, to carry all such investment on a net tangible-asset basis and not to reflect the valuable goodwill resulting from the long-established business of constituent banks and other affiliated companies" (pp. 141–142).

6. That a value of $25,000,000 be placed upon the 2,000,000 shares of Banco in order to comply with the laws of the State of Delaware under which Banco was incorporated (p. 142).

7. To set aside a reserve of $14,000,000 "from the surplus" as "a reserve for contingencies" (p. 142).

8. "After giving effect to all of these proposals, that 1,614,531 shares of stock outstanding, after setting up the reserve for contingencies, will be represented by capital and surplus of $29,265,053.40 as of October 31, 1932."

9. That after giving effect to the proposed changes Banco's investment of capital stock of banks and other affiliated companies will be carried on a net tangible asset basis (pp. 142–143).

10. That the proposed change has for its primary purpose the setting up of the corporation's statement on a net tangible asset basis and effecting such other changes that are in accordance with sound accounting methods" (pp. 143–144).

11. That the stockholders keep the matter secret and confidential "until the directors have taken action, when it will be released for publication" (p. 144).

The $14,000,000 in losses referred to are covered by testimony of Mr. Decker at pages 147 to 149. These losses appear upon the minute books of Banco, exhibit 16, page 176. The testimony of Mr. Decker upon this point is as follows:

"Q. Now, Mr. Decker, Mr. Benson raised the question—I am going to call your attention to it so there is no mistake about it; I don't want to mislead you—I am going to call your attention to the eighth page following page 176 in your minute books, being a letter addressed to Mr. Frank P. Heffelfinger, exhibit 16, containing a summary of the reports of your examiners of actual losses taken on which you predicated this $14,000,000 reserve, and will ask that you read that into the minutes.

"A. Which paragraph?

"Q. This paragraph right here.

"Mr. BROWN. What is the date of this letter?

"A. November 9, 1932: 'Mr. Hallenberg has submitted a written report giving his estimate of probable losses on loans and discounts and miscellaneous assets held by banks in the group as $14,566,503. Of this amount he states that in his opinion $8,750,235 represents losses which, while not recognized by the banks nor set up by the regular National and State supervising authorities, are very well determined at this time. The balance of $5,816,268 is based upon an estimated loss of 10 percent of all loans and discounts and miscellaneous assets classed by him as "slow", and 50 percent of all assets classed by him as "doubtful." The figure of 50 percent of the "doubtful" is higher than the percentage heretofore used, either by our own examining department or by the various examining authorities.'

"Q. So there was a very well determined loss, was there not?

"A. Oh, yes; no doubt."

By this reduction in the amount of capital stock of Banco the $39,000,000 of water, or bonus, or goodwill, as Mr. Decker chose to call it, also was eliminated from the financial structure of the company.

It is significant and illuminating, and it seems to be provocative of comment, that the letter of Mr. Thomson was written in terms ostensibly stating all the facts, and yet it concealed those that were most material. For instance, Mr. Thomson makes the apparently innocent statement (no. 1 supra) that the proposed changes would reflect more definitely in the corporation's statements the net tangible asset value of its stock. This statement is false and misleading because theretofore none of Banco's statements had ever in any degree reflected the net tangible value of its stock. The proposed change, therefore, could not reflect these facts "more" definitely because they had never been reflected at all. It was a false and misleading statement, which Banco from past experience knew its stockholders would swallow, and which they did swallow in this instance. Significant, too, is the failure of Thomson to mention the $14,000,000 of losses, the $9,000,000 of payments of dividends out of capital, and the $39,000,000 of water or bonus which was in the capital structure and had to come out and which they were then taking out to cover up the sins and abuses of the past. The letter was artfully written. Only a man of Thomson's consummate knowledge of Banco affairs and his letter-writing ability could have stated this as aptly as he did to accomplish the wrongful purpose which Banco and its officers had in mind.

In such manner did Banco wash out of its capital structure something like $62,000,000 "in accordance with sound accounting methods." It was a bitter pill to take, and it had to be sugar-coated. Accordingly, another dividend was declared. The stockholders and the public must not yet learn that losses were piling up on losses. The frauds and abuses of the past must be covered up by a dividend. Mr. Decker testified concerning this dividend as if it were an entirely proper and regular transaction. This appears at page 146:

"Q. Now, Mr. Decker, immediately after you reduced your capital and surplus and set up this reserve of $14,000,000 for losses, I will ask you if it isn't a fact that in the face of that $14,000,000 reserve for losses that you had found it necessary to take in 1932, you declared another dividend?"

"A. Yes, sir; I suppose so."

What, you may ask, would have happened if the full story had been told and the figures set down in Thomson's letter showing the $14,000,000 of actual losses, the $9,000,000 of payments out of capital, and the $39,000,000 of water or bonus? Would the stockholders have believed the statement that he made in his letter as to the purpose of the changes which he proposed, and would they have believed that the purpose of this change was to save certain corporation taxes, and the further statements that the changes were made simply in the interests of sound accounting?

The statement that it has been the policy of Banco, as shown by its annual report of 1931, to give as full information as possible to its stockholders was false. The record in this case so far made up shows that every possible trick, device, and concealment was resorted to for the purpose of keeping the stockholders and the public in ignorance of the true facts relative to Banco's affairs. Significant, too, is the change from stock having par value to stock having no par value. This device also was of assistance to the officers and directors of Banco in concealing the losses and abuses of the past. The whole letter is characterized by the omission of facts essential to an understanding of Banco's affairs. The misleading statements were calculated to induce the stockholders to accept them at their face value. The attitude of Banco and its officers is well reflected in the testimony of Mr. Decker relative to payments that were made out of capital. That there was any wrongdoing involved in this was not apparent to Mr. Decker, and he would not admit such to be the fact. This is shown by his testimony:

"Q. And Mr. Decker, I believe you told us that 11,000 people in the State of Minnesota had 998,000 shares of your stock distributed to them under these circumstances?

"A. That dinner cost each one quite a lot, didn't it?

"Q. And the dividends cost them more, didn't it?

"A. The dividends cost the stockholders more?

"Q. Yes, sir; out of capital?

"A. Well, they got the money on the dividends; didn't cost them anything" (pp. 151–152).

Significant, too, in this connection, is the fact that Banco made an application to the Reconstruction Finance Corporation for a $23,000,000 loan on November 21, 1933, which, it is claimed, was necessary to supply needed capital for Banco and its affiliates (p. 157). The $23,000,000 is just about the equivalent of what Banco now has in its capital structure—$25,000,000 of non-par value stock. Is there any relation between the loan and the amount of stock without par value set up on Banco's books? That is a matter that might well be investigated, as well as the entire financial structure of Banco, to find out what value, if any, still remains. This should be a fruitful field of investigation for the commerce commission. Should it not be permitted to proceed without interference by this court?

V. TRADING AND DEALING IN BANCO STOCKS

The commerce commission desires to explore the question whether there has been fraudulent trading and dealing in Banco stock by plaintiff. This branch of the investigation was under way when this court issued its restraining order but had not yet been fully developed. However, even in the short time the hearing has been in progress some very significant facts have been developed. That there has been extensive dealing and trading in Banco stocks is evident.

THE STOCK SALES AND OFFERINGS TO THE PUBLIC

Early in 1929—February 14, 1929—Banco made application to the Commerce Commission of Minnesota for license to sell 600,000 shares of its stock at $50 per share (p. 14), by itself and through its subsidiary, the Minnesota Co. (exhibit 2, pp. 4–6), which company was later absorbed by another subsidiary known as Banco-

Northwest (p. 17). The license to sell stock was issued by the commission. Thereafter, on September 11, 1929, Banco had its stock listed on the Chicago Stock Exchange for the purpose of giving it an exempt status and thus placing Banco and its stock sales and operation beyond the control of the commission. At first this may have appeared to be an innocent act and in keeping with good intentions and honest purposes. What happened subsequently shows that the purpose of it was to enable Banco to operate without restraint, and thereby enable it to defraud and deceive its stockholders and the public in one of the wildest financial orgies of record. It is the continuation of that freedom from restraint which Banco seeks in this case before this court. He who comes into a court of equity must come with clean hands. Are these hands clean?

Banco, according to Mr. Decker's testimony (p. 198), made the following public offerings of its stock:

1. In the early part of 1929, 100,000 shares at $50 per share.
2. Late in the summer of 1929, 97,000 shares at $62.50 per share.
3. Sales by a syndicate under agreement dated October 10, 1929, by which the syndicate, headed by A. G. Becker & Co., of Chicago, underwrote the sale of at least 150,000 and not more than 175,000 shares at $72.50 per share.

Banco had previously had a written agreement with A. G. Becker & Co., in which the price was fixed at $32.50 per share, but this was changed to $72.50 per share because the Becker Co. thought the first figure was too high (p. 201). Just prior to that time Banco was selling in the market at $100 per share (p. 200), and Mr. Decker testified in respect to this figure, "Well, it was more than we thought it was worth."

As early as 1930, Banco maintained a so-called "customer ownership department." There were extensive "over-the-counter" dealings in Banco stock, and these were of such proportions as to maintain what Mr. Decker characterized as an over-the-counter price of the stock. Later the stock was traded in on the Minneapolis Stock Exchange, where Banco had its "own agents or specialists placed" for the purpose of such dealing in Banco stock. In this way the price or market, whether over-the-counter or on the exchange, was controlled, to some extent at least, by Banco. This is apparent from the testimony of Mr. Decker beginning at the bottom of page 36 and on page 37, as follows:

"Q. Well, that price of your stock was an over-the-counter price maintained at that time, was it not?

"A. Well, it was until it was traded in on the Minneapolis Stock Exchange.

"Q. And it was traded on the Minneapolis Stock Exchange by one of your own agents or specialists placed there for that purpose?

"A. Yes.

"Q. So, relatively, the price or market, whether over-the-counter or exchange, was controlled to some extent, at least, by you people yourself?

"A. No, sir."

It is true that Mr. Decker (p. 38) claimed that no particular effort was made to sell Banco stock because it was oversubscribed by the various stock offerings. The underwriting contract with A. D. Becker & Co., the maintenance of the customer-ownership department, the over-the-counter trading, and the trading on the Minneapolis Stock Exchange belie the assertion of Mr. Decker and show that there was selling and trading in this stock in many ways on a very extensive scale. Both Mr. Decker and Mr. Wold bought some stock in the customer-ownership campaign (p. 51).

Mr. C. B. Mills, who at one time was the president of the Midland National Bank & Trust Co. and later an officer of Banco, testified that Banco maintained a regular customer ownership department (p. 72) and that in its regular set-up, as shown by the organization chart of Northwest Bancorporation, exhibit 9, which was dated March 1933, a customer-ownership department is shown and that this department is under the direction of Mr. Gardner B. Perry, vice president, and W. F. Brockman, assistant secretary (p. 72). This department appears to have existed as early as 1930 and was still operating in 1933.

This campaign to sell stock to customers of the banks was organized as one phase of the campaign to sell a vast amount of Banco stock to the public. The employees of the Northwestern National Bank, Midland National Bank & Trust Co., and of the other affiliate banks, were engaged in the sale of Banco stock and were paid small commissions for making sales. In order to stimulate interest in making sales various groups and clubs of officers and employees were organized to compete against one another. These were organized by Banco under the direction of Mr. Perry and Mr. Brockman. Banco maintained a department for publicity and directed the competitive effort of the various groups. A Mr. Burgess was in charge of this. This is shown quite fully on pages 73 to 76. Interesting in this connection is the chart published at page 13 of Banco's official publication, The Covered Wagon, of March 1932, exhibit 2. This chart is entitled, "People who have made 25 sales and over, as of February 29, 1931." We invite the court's attention to an examination of this chart and the names of the competing organizations. We respectfully submit that they must have had pronunciation practice at Banco in order to enable its officers and employees to properly pronounce the names of the various clubs, which are: Club Hecpendeka, Club Penheptakonta, Club Hexakonta, Club Pentakonta, Club Tetrakonta, Club Triakonta, Club Hecdeka, Club Heptakonta, Club Penpentakonta, Club Pentetrakonta, Club Pentriakonta, Club Penicosa.

These sales evidently were very extensive. We call the court's attention to exhibit 10, prepared by Mr. Mills, showing a list of stockholders of Banco holding 1,000 shares or more. Both Mr. Mills and Mr. Decker bought stock under this arrangement. The sales were so extensive, according to Mr. Decker's testimony, that on December 31, 1931, there were 11,039 persons in the State of Minnesota owning 998,875 shares of Banco stock of the value of $49,943,750 computed on the basis of the par value of the original issue (pp. 52–53, 96, 151–152). Undoubtedly much more than this was paid for this stock because up to that time the price ranged from fifty to one hundred dollars per share. The extent to which the purchasers were cheated and defrauded is not now fully known, and if this court shall grant plaintiff's prayer for an injunction, will never be known. The State commerce commission is the one body endowed with the power fully to uncover the facts of this infamous story. We cannot believe that a court of equity will stay its hands.

Not to be overlooked in this connection is the reference in Mr. Thomson's letter of November 14, 1932 (p. 143), in which he states that there had been transferred to the Union Investment Co. nonbankable assets including acquisition loans in the sum of $3,452,900, customer-ownership accounts in the amount of $8,654.77, and employees' stock-acquisition notes in the amount of $16,412.39. How can Banco explain the taking and ownership of these notes and the transfer of them to the Union Investment Co. as assets of Banco to be liquidated by it? Just what were these acquisition loans. How did there come to be $3,452,900 of nonbankable acquisition loans? Did the hand of fraud lie also upon this unexplored domain? We do not know, but the State of Minnesota has a right to ask and to receive an answer.

BANCO'S STOCK SYNDICATE OR POOL

The officers and directors of Banco formed a pool or syndicate for the purpose of dealing in Banco stock and controlling the market in such stock. The idea of a pool or syndicate was first mentioned at a meeting of some of the officers and directors of Banco in the Northwestern National Bank on December 27, 1929. Mr. Decker suggested it to Mr. John S. Pillsbury and others, and requested that Mr. Pillsbury consent to act as one of the managers of the syndicate (pp. 167–170). Mr. Decker was the manager and attended to the buying and selling of Banco's stock (p. 170). Mr. Pillsbury took no active part as a manager. The syndicate contract or agreement was signed on January 4 or 5, 1930, by John S. Pillsbury and probably at about the same time by David Williams, and F. W. Decker. These three men were to be the managers of the syndicate (pp. 170–174). The syndicate agreement is exhibit 28 and is found on pages 174 to 178. By its terms the syndicate or pool was to continue until December 31, 1930, but could be extended to December 31, 1931 (par. 5 of the agreement). By its terms the syndicate members agreed to purchase 75,000 shares of stock and not to dispose of the stock until after the syndicate agreement had been terminated. The letters of Mr. Pillsbury relative to his Banco stock transactions are marked exhibits 27–1 to 27–18 and are found in paragraphs 179–197.

We find that certain officers of Banco could not resist the use of deception even in its dealings with its own directors. With full knowledge of the shaky financial condition of Banco and the corporate abuses that had been indulged in, to which we have already called attention, Mr. Decker in writing to Mr. Pillsbury on March 29, 1930, in exhibit 27–17 (p. 196) said:

"We are very well satisfied with the condition of the syndicate and the market on the stock."

Mr. Decker was the active syndicate manager (p. 212) and the members of the pool were all notified of the quotas when their stock was purchased. Mr. Decker testified on page 227 that he had knowledge of purchases, but didn't recall O.K.ing each purchase. These purchases were made under Mr. Decker's direction, largely by Mr. West, Mr. Thompson, and Mr. Wold, with whom Mr. Decker conferred relative to the pool, and whose advice he had from time to time (pp. 227, 229, 230, 231).

One of the most illuminating circumstances in connection with this matter is the fact that the stock was bought by Banco itself and not by the syndicate. The syndicate was formed to carry out Banco's purpose, and Banco's money was used to finance the operations of the syndicate. That this was an illegal and improper way of doing business, it seems to us, cannot be denied. Mr. Decker testified, at page 231, relative to these purchases of stock by the pool, as follows:

"Q. May I ask. You say you think the purchases were carried on in the name of the Northwest Bancorporation?

"A. It would appear so from those statements, that big pile of statements."

The commission claims, rightfully we think, that this pool or syndicate was an unlawful and fraudulent plan and conspiracy, as alleged in paragraph XXIII, beginning at the top of page 11 of the answer. The terms of the conspiracy are set out in that part of the answer, and we call the court's attention to the allegations on page 11. Mr. Decker's testimony indicates that these allegations are true. If so, then the commission should investigate this pool and syndicate until the last unlawful transaction has been revealed and discovered and the guilty parties brought to justice. Mr. Decker and Mr. Pillsbury testified relative to this pool and syndicate as though it were a matter of fact and proper and legal in every respect. Nevertheless, transactions of this kind have always been denounced by the courts, and especially by the Federal courts. The court's attention will be directed to these matters later in our argument upon the law. A restraining order should not be issued to prevent or hinder the commission from

going to the very bottom of this entire matter. The commerce commission still has further questions to ask. Surely it has a legal right to ask them and to have them answered.

VI. THE ALLEGED AMOUNT OF WORK INVOLVED IN THE PRODUCTION OF PLAINTIFF'S BOOKS AND RECORDS BEFORE THE COMMISSION

The allegation that plaintiff has been damaged in the sum of $3,000 by reason of being compelled to produce its books and records is false upon its face. We invite the court to carefully read the entire record and to say from its knowledge of business and affairs whether the expense could reach that figure. Mr. Albrecht testified that he had the chief clerk bundle records for him and he took them over with him (p. 90). Mr. Decker testified that he brought the pool correspondence with him. This correspondence could be carried by anybody in his pocket (p. 154). When asked about the records kept by the syndicate, Mr. Decker testified, "Well there was very little work connected with the syndicate", and he conveyed the impression that the records were few indeed. Earlier in the hearing Banco's attorneys did not think the production of these records would cause the expense or inflict the hardships complained of in the complaint. This is evident from what Mr. Faegre says at page 233:

"May I suggest that we take our adjournment at this point; our postponement be granted at this point. Let us see what we can accomplish in the way of identifying these records. I gather they have been produced from among the files of Northwest Bancorporation. I presume these files in the syndicate matter were built up and found their way in that record, and I think perhaps this whole thing might be expedited, and I make that suggestion for that reason."

At that time Mr. Faegre regarded the production of the records and the producing of the proper individuals from Banco to identify them as a fair suggestion (p. 234). Mr. Faegre's only concern seemed to be that a system be worked out to facilitate this matter. At that time he did not regard the work or expense as of paramount importance. Mr. Stinchfield, one of the plaintiff's counsel, expressed himself as being "entirely in accord" with the suggestions made by the commission and agreed to by Mr. Faegre relative to the production of records and witnesses (pp. 235–250). Pages 235 and up to 250 of the record contain a discussion before the Commission out of which an arrangement for cooperation by the Commission and Banco for the production and examination of the records and the production of witnesses from Banco who could identify them before the commission.

The records produced constitute only a small bundle and can almost be carried in a lawyer's brief case. To say that the expense of producing them is in the amount of $3,000 is preposterous.

VII. THE CLAIM THAT THE INVESTIGATION CAUSES LEGAL INJURY TO BANCO

This claim also is absurd. If calling attention to frauds practiced by plaintiff, misrepresentations, the obtaining of money by reason of fraud and misrepresentation, betrayal of stockholders and stock purchasers, the concealment of this wrongdoing, the payment of dividends out of capital, the setting up of something like $39,000,000 of water and bonus in the capital structure of Banco as assets, the maintenance of an unlawful pool and syndicate for the control of the stock of Banco, and the discovery of corporate wrongdoing by Banco causes it injury, then we plead guilty. We respectfully submit that the discovery and investigation of these matters is an imperative duty of the commission for the public good. The mere fact that a claim is made that such discovery and investigation causes Banco legal injury but emphasizes the brazen character of this organization.

The goal of Banco was the financial domination of the entire Northwest. The record in this case shows that Banco is used to having things its own way. It set up its financial structure to suit itself. It controlled audits. It wrote and released its own newspaper articles in which the affairs of Banco were discussed. It dominated the financial and business situation throughout the Northwest. If in its various activities, in the exercise of this power, Banco stayed within the bounds described by law, it has nothing to fear from investigation. If it did not, the commission and the great State which created it have a right to learn the facts. Banco calls this investigation by the commission a legal injury. We call it a clear public duty.

VIII. THE ANNA ENGLUND SUIT

The claim that the investigation before the commission is in the nature of a discovery in aid of the suit brought by Mrs. Englund against Banco, Mr. Decker, and the other officers of Banco, is preposterous. The facts in this case show that the investigation was conducted in the public interest to enforce the so-called "blue sky law" of Minnesota. We submit that no person can entertain any reasonable doubt upon that proposition. Furthermore, it conclusively appears that Mrs. Englund's attorneys were present before the commission and heard the testimony which Mr. Decker and the other officers of Banco gave and were thus informed without even making inquiry of the commission or any of its employees as to the matters revealed in this investigation.

The claim that the investigation is in aid of Mrs. Englund is as false as the reports and letters sent out by Banco to its stockholders. There is not one particle of evidence—one single fact—that can be referred to in the entire proceedings herein that justifies an assertion that the investigation has anything to do with Mrs. Englund's suit.

IX. DECKER'S RESIGNATION

Mr. Decker resigned as an officer and director of Banco and of the Northwestern National Bank on January 10, 1934 (p. 246). Why did Decker resign? Was it that plaintiff might now claim that Mr. Decker was no longer an officer of Banco and therefore not subject to cross-examination in any investigation or trial involving the matters referred to under the rule laid down by the Supreme Court of Minnesota in the case of *Snelling State Bank of St. Paul* v. *Clasen* (132 Minn. 404, 157 N.W. 643)? Was it because he had been a party to schemes, frauds, and betrayals and had been an unfaithful officer and director of the bank and of Banco? The latter hardly seems to be true because the record in this case is the history of such things for years, of which those who owned and controlled Banco had knowledge and of which they evidently approved until this investigation began to let in the light. Was it necessary to have a victim or a "goat"? Was it for some other reason? Is it Decker's fault that he was exposed, not that he was guilty of wrongdoing, but that he was exposed? And that thereby Banco was exposed?

Whatever the reason may be the passing of Mr. Decker does not mark the passing of Banco's system. During its entire history Mr. Decker stood at the head of Banco as a representative of its owners. His stepping out simply puts another man at the head of it as the representative of the same owners. The system goes on. It uses men as long as they serve the system's purpose and then it drops them. Mr. Decker was simply the representative of the system. When he had served the system's purpose it dropped him just as it will drop others in the course of time. It is this system which the commission, among other things, is investigating. It is this system which caused the corporate abuses, frauds, and betrayals that have been mentioned. It is this system which should be changed to the end that we may have honest banking and a sense of trusteeship, not only of the funds intrusted to the bank, but also a larger trusteeship of the great public interests committed to its keeping. Literally, it was the prosperity and the happiness of this great Northwest, which was committed to the care of Banco. A thorough investigation of the abuses of this system by the commission should not be stopped by the restraining order of his court. We know only in part, but we know enough to indicate the crying need for a thorough-going examination and diagnosis.

There are cases in which major surgery is resorted to, and this appears to be such a case.

Argument for defendants

I. ANALYSIS OF THE MOST PERTINENT PROVISIONS OF THE STATE SECURITIES ACT.

Before going further into a consideration of the legal phases of this case we believe it may be helpful to make a short analysis of the more pertinent provisions of the Minnesota securities act.

Under section 3996–19, Mason's Minnesota Statutes, we find the following grant of powers to the commerce commission:

Whenever such commission, from information in its possession, has reasonable ground to believe that any person within 3 years has sold any securities or is about to sell any securities, the commission has the power to investigate, providing any of the following facts exist:

1. That said securities are or were fraudulent.

2. That said securities are about to be or were sold in a fraudulent manner.

3. That such person in such sale or attempted sale has worked or will work fraud on purchasers.

4. That such person has violated or is about to violate any provision of said act.

In any such case the commission shall have power to make examination and investigation, as follows:

1. To make an investigation of the books, records, papers, accounts, property, business, and affairs of such person.

2. To make or cause to be made an audit of the accounts, books, and records of such person.

3. To require such person to permit such examination, investigation, and audit to be made and to submit to the commission his books, papers, records, and accounts for the purpose of such investigation.

The foregoing authority applies not alone to the seller of securities but to the issuer thereof, if such securities were or are about to be sold for or on behalf of the issuer.

In case any person or issuer shall fail or refuse to obey any order of the commission which it is authorized to make under this act requiring such person to permit an investigation of his books, records, papers, or accounts, and to submit the same to the commission for such purpose, the district court, subject to the limitations of sections 7 and 10 of article 1 of the State constitution and of the fourth and fifth amendments to the Federal Constitution, is directed without notice to cause a search warrant to be issued commanding the sheriff to search and seize such books and records and deliver them to the commission for the purpose of such examination. Any books or records so seized may be held by the commission for a reasonable time for the purpose of making such investigation.

The commission is given power to take such steps as are necessary to cause the arrest and prosecution of all persons found guilty of violations of this law.

The commission by summons or subpena may require the attendance and testimony of witnesses and the production of books and papers relating to any matter over which it has jurisdiction under this act. Any judge of the district court, upon application of the attorney general in behalf of the commission, may compel the attendance of witnesses and the giving of testimony before the commission in the same manner and to the same extent as before said court.

Full protection is given to witnesses who may be required to testify with reference to matters tending to incriminate themselves by providing that any such person, having claimed such privilege and having, nevertheless, been required to testify, shall not be prosecuted or subjected to a penalty or forfeiture on account of any matter concerning which he may have been required to testify or produce evidence except for perjury committed in the giving of such testimony.

Applying the foregoing analysis of the law with reference to the facts of the present case, we find that if the commission had reasonable ground to believe that within 3 years preceding the issuing of its order for investigation Banco sold any securities or is now about to sell any securities, or if during such period the stock in Banco was sold for or on behalf of Banco as issuer thereof, the commission had the right to institute an investigation providing:

1. That Banco stock is or was fraudulent.
2. That Banco stock is about to be or was sold in a fraudulent manner.
3. That such sale of Banco stock has worked or will work fraud on purchasers.
4. That Banco or anyone acting for Banco has violated or is about to violate any provision of the State securities act.

II. THE COMMISSION'S ORDER FOR INVESTIGATION

The commission's order for investigation in the main sets forth the following violations of the law on the part of plaintiff as the reason for the issuing of said order:

1. From information in the possession of said commission it alleges that it has reasonable ground to believe that plaintiff within 3 years prior to the issuing of said order had sold common stock of plaintiff within the State of Minnesota in a fraudulent manner.
2. That such sale has worked or will work a fraud on the purchasers thereof.
3. That in such sales plaintiff has violated the provisions of the statutes of Minnesota with respect to the sale of securities.
4. That plaintiff and other persons acting in its behalf and under its direction are selling and intending to sell stock of said plaintiff and that such future sales of said stock will work a fraud upon the purchasers thereof.
5. That plaintiff has listed said stock on the Chicago Stock Exchange for the purpose of giving it exempt status and thereby relieving plaintiff in part of supervision by the commerce commission as to such sale and caused said stock to be listed on the Minneapolis-St. Paul Stock Exchange for the purpose of establishing a fictitious market quotation upon which sales of said stock could and would be manipulated.
6. That plaintiff established and maintained a customer ownership campaign in connection with which said stock was sold in a fraudulent manner and that the sales made in connection with said campaign have worked and will work a fraud upon the purchasers of said stock.
7. That plaintiff has sold its capital stock in a manner contrary to the provisions of the State securities act by effecting sales thereof through officers, agents, servants, employees, subsidiaries, and other persons not duly qualified or authorized by law to sell or act as agents in the sale of stock.
8. That plaintiff pursuant to a fraudulent scheme misled purchasers of stock as to the bona fide market price of said stock. That said scheme was carried out in part by means of the organization of one or more pools which manipulated the ostensible market prices of said shares in such a manner as to mislead purchasers as to the public demand for said stock and as to the bona fide market quotation thereof and as to the true value thereof. That said scheme was that Northwest Bancorporation would furnish money to finance the operation of said pool or pools and that those to whom the money was furnished should not repay the same. That said scheme was further that plaintiff would continue to pay dividends representing that such dividends were paid out of earnings and profit when in truth and fact said plaintiff had no earnings. That said scheme was further that plaintiff would incorporate a trading company known as "BancNorthwest" for the purpose of trading in the stock of plaintiff theretofore sold to lead the public to believe that said stock was of greater value than it really was. That said scheme was further that in various ways said plaintiff and those acting with it should mislead purchasers of the stock in plaintiff as to the true value thereof.

An examination of the foregoing statement of reasons for the investigation must necessarily result in the conclusion that such reasons were stated with as much definiteness as the nature of the case made possible.

On the basis of the foregoing reasons for the investigation the commerce commission issued its order directing that an examination should be made of the sale and disposition of the common stock of plaintiff and in connection therewith of the books, records, papers, accounts, property, business, and affairs of the plaintiff for the purpose of ascertaining whether said stock has been sold and is being sold in a fraudulent manner by plaintiff or by any person or corporation acting in its behalf or under its direction or so as to work a fraud on the purchasers thereof and to determine whether plaintiff or persons acting for it have violated or are about to violate any of the provisions of the State securities act.

The commission further ordered that plaintiff or any person who has been or is engaged in the sale of said stock within the State should permit examination, investigation, and audit to be made of its books, papers, records, and accounts pertaining to the sale of said stock within the State.

The commission further authorized the commissioner of securities to conduct hearings, take testimony, serve subpenas for witnesses, books, and records in furtherance of said investigation.

The commission's order suspending exempt status of the common capital stock of plaintiff is less directly involved in this proceeding. We, accordingly, believe that it will not be necessary to present an analysis of said order but refer the court to a copy thereof contained in plaintiff's bill of complaint and designated exhibit C.

III. ISSUES

In our opinion the main issues involved in this proceeding are as follows:

1. Does this court have jurisdiction of the subject matter of this action notwithstanding the fact that plaintiff has not exhausted its legal remedy in the State courts?
2. Is not injunction an improper remedy in this case, seeing that plaintiff has made no sufficient showing of irreparable injury?
3. Has plaintiff lost his right to challenge the right of the commerce commission to proceed with its investigation by reason of having voluntarily submitted to the jurisdiction of such commission?
4. Does the title of the Minnesota securities act conform with the requirement of section 27 of article 4 of the State constitution?
5. Does the securities act of the State of Minnesota conflict with the due-process clause or the equal-protection clause of the fourteenth amendment to the Constitution of the United States or with similar provisions of the Minnesota constitution?
6. Does the securities act and the commission's orders thereunder constitute such an unreasonable search and seizure as to be in violation of the fourth amendment to the United States Constitution or section 10 of article 1 of the State constitution?
7. Does the securities act violate the provisions of the State constitution with reference to a threefold division of Government powers?
8. Has the commerce commission lost its legal right to investigate the sales of Banco stock by reason of the fact that such stock is no longer registered or by reason of the fact that Banco has offered to waive the exempt status of its stock?
9. Has there been such exhaustive valuations of corporate assets by plaintiff and such excessive valuations of stock sold on the basis of such excessive valuation of assets as to make the sales of Banco stock fraudulent?
10. Has the sale of Banco stock been fraudulent because dividends have been voted and paid notwithstanding the fact that there were no net profits from which to pay them?
11. Has the sale of Banco stock been fraudulent because plaintiff has directly misrepresented to the investing public the amount of its net earnings for the purpose of promoting the sale of its stock and advancing the price thereof?
12. Has the sale of Banco stock been fraudulent because plaintiff has maintained a pool contracted to keep huge blocks of stock off the market for 6-month periods and in various ways sought to alter the usual and natural currents of supply and demand for Banco stock for the purpose of raising the market price of Banco stocks above the natural market value?

IV. THIS COURT DOES NOT HAVE JURISDICTION TO ISSUE AN INJUNCTION IN THIS MATTER, BECAUSE PLAINTIFF HAS NOT EXHAUSTED ITS LEGAL REMEDY IN THE STATE COURTS

Section 27 of the State securities act provides as follows, Mason's Statutes, section 3996–27:

"The supreme court, upon petition of any person aggrieved, may review by certiorari any final order or determination of the commission. The issuance of the writ shall not, however, operate as a stay of proceedings unless specifically so ordered."

This clearly gives to the supreme court the power to stay proceedings in a proper case. In such a case, under the holding of the Supreme Court of the United States in the case of *Porter* v. *Investors Syndicate* (286 U.S. 461), the Federal courts do not have jurisdiction to restrain action by injunction until the remedy available in the State courts has been exhausted.

In the case mentioned the Investors Syndicate secured from the Federal district court for Montana an injunction restraining the State investment commissioner from revoking the company's license for failure to obey a rule regulating the substance and form of its certificates. The Supreme Court reversed the decree, saying:

"But we are told that the commissioner asserted his intention to enforce the order, and that the statute forbids the State court to afford interlocutory relief. Thus, says the appellee, though trial might result in a decision vacating the commissioner's order, in the interval irreparable harm would have been done by the revocation of the company's permit, and its officers and agents rendered liable to criminal prosecution. Such a state of the law, it is insisted, amounts to a denial of due process to which one confronted with the possible loss of property is not bound to submit but may at once, if there be the requisite diversity of citizenship and amount in controversy, apply to a Federal court for relief. Conceding the correctness of the premises, the conclusion is sound. *Pacific Telephone Co.* v. *Kuykendall* (265 U.S. 196). The appellant, however, denies the asserted statutory prohibition, and says that the plaintiff in an action attacking a decision by the commissioner may upon a proper showing obtain a stay of its operation."

V. INJUNCTION IS NOT THE PROPER REMEDY IN THIS CASE, BECAUSE THERE HAS BEEN NO SUFFICIENT SHOWING BY PLAINTIFF OF IRREPARABLE INJURY

Injunctions are never given for trivial reasons. Plaintiff in this case has shown no injury beyond slight inconvenience to its officers and directors and personnel by reason of being required to be present at hearings and being required to produce books and papers.

The case of *Fenner* v. *Boykin* (271 U.S. 240) involved the granting of an injunction to restrain State officers from enforcing a criminal law against dealings in agreements for purchase or sale of cotton for future delivery. The application was denied, the court saying:

"*Ex parte Young* (209 U.S. 123) and following cases have established the doctrine that when absolutely necessary for protection of constitutional rights courts of the United States have power to enjoin State officers from instituting criminal actions. But this may not be done except under extraordinary circumstances where the danger of irreparable loss is both great and immediate. Ordinarily, there should be no interference with such officers; primarily, they are charged with the duty of prosecuting offenders against the laws of the State and must decide when and how this is to be done. The accused should first set up and rely upon his defense in the State courts, even though this involves a challenge of the validity of some statute, unless it plainly appears that this course would not afford adequate protection. The Judicial Code provides ample opportunity for ultimate review here in respect of Federal questions. An intolerable condition would arise if, whenever about to be charged with violating a State law, one were permitted freely to contest its validity by an original proceeding in some Federal court. *Hygrade Provision Co.* v. *Sherman* (266 U.S. 497, 500)."

VI. PLAINTIFF HAVING CONSENTED TO AND INVITED THE INVESTIGATION AND EXAMINATION OF ITS BOOKS AND RECORDS CANNOT NOW CLAIM THEY CONSTITUTE AN UNREASONABLE SEARCH AND SEIZURE

The constitutional immunity from unreasonable searches and seizures, being a personal privilege, may be waived, as by a voluntary invitation or consent to a search or seizure (58 C.J. 1178). An invited search is neither illegal nor unreasonable (56 C.J. 1178), and note 25a citing the cases of *Paramore* v. *State* (129 S.E. 772 (G.A.)) and *People* v. *Broas* (215 N.W. 420 (Mich.)). Plaintiff welcomed and invited the examination of its books and records. It requested and accepted continuances on condition that plaintiff permit defendant's agents to continue the examination of plaintiff's books and papers. It not only consented but aided defendant's agents in their examination by providing the latter with space in its premises and suggesting and urging that said agents continue their examination on plaintiff's premises.

We think that these facts make out an even stronger case of waiver and consent than do the facts in the case of *State of Minnesota* v. *Borgstrom* reported in 69 Minn. 508, 72 N.W. 799, 975. In this case the court said:

"It is also assigned as error that the court erred in admitting in evidence an account book designated in the records as 'Exhibit 101', claiming that such book was the personal account book of the defendant, and in no sense a public record. One of the grounds urged against its admission is that it was a flagrant and high-handed transgression of defendant's constitutional rights, as guaranteed by both the Federal and State Constitutions, providing that no person shall be compelled in any criminal case to be a witness against himself, and that the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated. We are relieved from entering into a discussion of the rights of the defendant arising under these constitutional provisions by the conduct and admissions of the defendant himself and by the other facts in the record. * * * There was no wrongful seizure of the book containing exhibit 101. On the trial in the presence of the court, jury, defendant, and his counsel, the prosecuting attorney requested the witness Loe (then deputy register of deeds) to go to the register's office and bring the book into court, which he did without objections from the defendant. As we have previously stated, defendant had already voluntarily handed the book to the deputy to take before the grand jury to be used in the investigation of this very charge, and at no time did he object to the prosecution having possession of the book, or claim that such possession was wrongful, or that there was any wrongful seizure thereof. The objection was not based upon any wrongful, surreptitious, or forcible seizure of the book but that it was a private book or memoranda. Having peaceable possession of the book, the prosecution had a right to offer the same in evidence, as against the objection made."

VII. THE JURISDICTION OF THE FEDERAL COURTS DOES NOT EXTEND TO RESTRAINING THE ENFORCEMENT OF A STATE LAW ON ANY GROUND OTHER THAN THE UNCONSTITUTIONALITY OF SUCH LAW UNDER THE FEDERAL CONSTITUTION

This proposition we do not need to discuss further than to point out that if this court shall find the Minnesota securities act is valid under the Federal Constitution it has no further jurisdiction in this matter.

In support of the correctness of the legal proposition stated above we refer to the case of *Ex parte Young* (209 U.S. 123).

VIII. THE TITLE OF THE STATE SECURITIES ACT CONFORMS WITH THE REQUIREMENTS OF SECTION 27 OF ARTICLE 4 OF THE STATE CONSTITUTION

Section 27 of article 4 of the State constitution provides:

"No law shall embrace more than one subject, which shall be expressed in its title."

The title of the Minnesota securities act has been upheld as conforming to these requirements by the supreme court of the State: In *State* v. *Evans* (154 Minn. 95, 191 N.W. 425) against the contention that the title is not broad enough to cover investment contracts, and in *Kerst* v. *Nelson* (171 Minn. 213 N.W. 904) for a similar reason. The rule with reference to the sufficiency of a title is clearly set forth in *State* v. *Evans, supra,* as follows (pp. 100–101):

"The title of the act of 1917 is 'An act to prevent fraud in the sale and disposition of stocks, bonds, or other securities * * *.'

"Defendants contend that this title is not broad enough to cover legislation affecting an investment contract such as this, and that, insofar as it covers such contracts, it violates the constitutional provision which requires that the subject of the act 'shall be expressed in its title.' (Sec. 27, art. 4, State constitution.)

"Clearly the subject matter of a statute must be confined within the limits of the subject expressed in the title. Yet the title was never intended to be an index to the law. All that is required is that the act shall not include legislation which, by fair intendment, cannot be considered germane to the one subject expressed in the title. The main object of the constitutional provision is to apprise the members of the legislature of the contents of the act, to the end that they may not vote unwarily. If the title is such as to fairly apprise them of the general character of the enactment, it is sufficient. The generality of the title is no objection, provided only it is sufficient to give notice of the general subject of the proposed legislation and of the interests to be affected."

These Minnesota decisions, however, have upheld the title only with reference to its being sufficiently inclusive to cover certain particular matters. The Supreme Court of Georgia, however, in *State* v. *Skinner* (20 Ga. Ap. 204), upheld a very similar title of a similar securities act in general language, which we believe covers every possible objection to the title.

In holding valid the title of the Illinois securities act, which in scope is similar to that of Minnesota, the Supreme Court of Illinois said:

"The constitutional provision that no act shall embrace more than one subject does not mean that it shall contain only one provision. Its purpose is to prevent the joining in one act of incongruous and unrelated matters, and an act may contain any number of provisions which tend to further its purpose."

We need not present extensive authority in support of our contention that the title of the Minnesota act is sufficient. We merely call to the attention of the court the fact that the Supreme Court of Minnesota has never ruled an act unconstitutional on this ground except in very clear cases of violation of the requirements of the constitution.

IX. THE SECURITIES ACT OF THE STATE OF MINNESOTA DOES NOT CONFLICT WITH THE DUE-PROCESS CLAUSE OR THE EQUAL-PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES, NOR WITH SIMILAR PROVISIONS OF THE MINNESOTA CONSTITUTION

Whatever question there may have been as to the constitutionality of State securities laws when these were first enacted was completely set at rest by the three leading cases in 242 U.S.: *Hall* v. *Geiger-Jones Co.* (242 U.S. 539; 67 L.ed. 480; 37 S.Ct. 217; L.R.A. 1917 F. 514); *Caldwell* v. *Sioux Falls Stock Yards Co.* (1917) (242 U.S. 559; 61 L.ed. 493; 37 S.Ct. 224); and *Merrick* v. *N. W. Halsey & Co.* (1917) (242 U.S. 568; 61 L.ed. 498; 37 S.Ct. 227).

We believe we can most effectively answer plaintiff's contention that the Minnesota securities act and the action taken by defendants in pursuance of said act is a violation of the fourteenth amendment to the Federal Constitution by quoting somewhat extensively from the opinion of Justice McKenna in the case of *Hall* v. *Geiger-Jones Co.*, supra. The court first considers the proposition that the State in the exercise of this power is exercising its police power and that this power is only to a very limited extent subjected to restriction by the provisions of the Federal Constitution.

The Court says:

"The primary postulate of the State is that the law under review is an exercise of the police power of the State, and that power, we have said, is the least limitable of the exercises of government (*Sligh* v. *Kirkwood,* 237 U.S. 52, 59 L.Ed. 835, 35 Sup. Ct. Rep. 501). We get no accurate idea of its limitations by opposing to it the declarations of the fourteenth amendment that no person shall be deprived of his life, liberty, or property without due process of law, or denied the equal protection of the laws (*Noble State Bank* v. *Haskell,* 219 U.S. 104, 110; 55 L.ed. 112, 116; 32 L.R.A. (N.S.) 1062; 31 Sup. Ct. Rep. 186; Ann. Cas. 1912A, 487). A stricter inquiry is necessary, and we must consider what it is of life, liberty, and property that the Constitution protects."

Pursuing the inquiry what it is of life, of liberty, and of property which the fourteenth amendment protects, the court comes to the conclusion that the Ohio securities law, the scope of which is very similar to that of the Minnesota law, does not infringe upon this amendment.

The Court remarked:

"The reason and extent of the law we have indicated and the control to which individual transactions are subjected, and we think both, are within the competency of the State."

The Court continues:

"Inconvenience may be caused and supervision and surveillance, but this must yield to the public welfare; and against counsel's alarm of consequences we set the judgment of the State."

The Court considered next the question whether the securities law under review denied to any person the equal protection of the law. More than a score of possible inequalities were referred to. Without giving separate attention to each of these the Court expressed this opinion (557):

"We cannot give separate attention to the asserted discriminations. It is enough to say that they are within the power of classification which a State has. A State 'may direct its law against what it deems the evil as it actually exists without covering the whole field of possible abuses, and it may do so none the less that the forbidden act does (557) not differ in kind from those that are allowed. * * * If a class is deemed to present a conspicuous example of what the legislature seeks to prevent, the fourteenth amendment allows it to be dealt with although otherwise and merely logically not distinguishable from others not embraced in the law' (*Central Lumber Co.* v. *South Dakota*, 226 U.S. 157, 160; 57 L.ed. 164, 169; 33 Sup. Ct. Rep. 66). The cases were cited from which those propositions were deduced. To the same effect is *Armour & Co.* v. *North Dakota* (240 U.S. 517; 60 L.ed. 776; 36 Sup. Ct. Rep. 440; Ann. Cas. 1916D, 548)."

At about the same time as the foregoing case was heard before the Supreme Court of the United States there came to that Court on appeal from the District Court of the United States for the District of South Dakota an appeal from a decree of that court enjoining the enforcement of the securities act of South Dakota. The contention was made that the South Dakota act violated the fourteenth amendment. But the Supreme Court found no merit in this contention and reversed the injunction decree of the lower court.

In the case of *Merrick* v. *N. W. Halsey & Co.*, supra, the validity of the securities act of the State of Michigan came before the Supreme Court of the United States on appeal from the District Court of the United States for the Eastern District of Michigan to review a decree enjoining the enforcement of said act. The injunction issued by the lower court was reversed by the Supreme Court. In this case the validity of the Michigan act was attacked in a manner which bears a striking resemblance to plaintiff's attack on the validity of the Minnesota act. It was claimed that the requirements of the act were unreasonable; that they were impossible of performance; that it exacted from private parties matters of confidence; that it invaded and destroyed property rights; that it curtailed freedom of contract; that it seriously interfered with plaintiff's business and property; that it violated a section of the constitution of Michigan which provided that no law shall embrace more than one subject which shall be expressed in its title; that it violated the fourteenth amendment, particularly by permitting exceptions which resulted in a violation of the equal protection of the laws guaranteed by that amendment; and that it imposed an illegal burden upon interstate commerce.

In the main, the Supreme Court supports its opinion in this case by referring back to what was said in the case of *Hall* v. *Geiger-Jones Co.*, supra. The new material in this decision to which we would call attention is the proposition that, granted that the general field is within the State's police power, it is for the State to choose the means by which it will exercise that power and that the Federal courts will not inquire into the wisdom of the State's choice of means.

The court said: "Besides, it is for the State to judge in such circumstances, and the judgment and its execution would have to be palpably arbitrary to justify the interference of the courts."

The court continues: "Upon this difference in views we are not called upon to express an opinion, for, as we have said, the judgment is for the State to make, and in the belief of evils and the necessity for their remedy and the manner of their remedy the State has determined that the business of dealing in securities shall have administrative supervision, and 26 States have expressed like judgments."

Answering the contention that the Securities Act took away the right to carry on business the court said (p. 588): "To the latter we say the right to do business is not taken away; the other we have already answered and need only add that we cannot, upon such considerations, limit the power of the State. The State must adapt its legislation to evils as they appear, and is not helpless because of their forms."

Replying to the argument that there might be arbitrary and unreasonable action on the part of the Securities Commission the court said (p. 590): "The contentions based on the exemption and provision are a part of that which accuses the law of conferring arbitrary discretion upon the commission, and committing to its will the existence or extinction of the business. The accusation is formidable in words, but it is the same that has been made many times. It is answered by the comment and the cases cited in the opinion in the other cases. Besides, we repeat, there is a presumption against wanton action by the commission, and if there should be such disregard of duty, a remedy in the courts is explicitly given, and if it were not given it would necessarily be implied."

Finally, the court brushed aside the objection that the title of the act did not indicate its provisions and thereby violated the constitution of Michigan with the remark: "The objection is untenable and does not call for particular notice."

In our opinion the three foregoing cases have settled the question whether the securities act of Minnesota violates the due-process clause or the equal-protection clause of the fourteenth amendment, the general scope of the Minnesota law being the same as that of the corresponding laws of Ohio, Michigan, and South Dakota.

It likewise follows that if the Minnesota law does not run counter to these provisions of the Federal Constitution neither does it violate the corresponding provisions of the State constitution.

It is, however, proper to point out that the constitutionality of the Minnesota act has been attacked again and again before the Minnesota Supreme Court and found valid. Thus in *State* v. *Nordstrom* (169 Minn. 214, 210 N. W. 1001), the act was held constitutional with reference to the following matters: It is not class legislation. It does not interfere with the right of contract. In the case of *State* v. *The Gopher Tire and Rubber Co.*, the law was held valid as a proper exercise of the police power. As such, the court said, it must not be given a narrow construction. In *State ex rel. Hardstone Brick Co.* v. *Department of Commerce* (174 Minn. 200, 219 N. W. 81) the court upheld a hearing before the Commerce Commission as due process.

Before leaving this field of inquiry we wish to refer to the opinion of the court in the case of *Interstate Commerce Commission* v. *Brimson* (154 U.S. 447, 473), which gives an excellent analysis of the power of public administrative bodies to investigate private business, examine witnesses, and to require the production of books and records. The court said:

"It was clearly competent for Congress, to that end, to invest the Commission with authority to require the attendance and testimony of witnesses, and the production of books, papers, tariffs, contracts, agreements, and documents relating to any matter legally committeed to that body for investigation. We do not understand that any of these propositions are disputed in this case.

"Interpreting the Interstate Commerce Act as applicable, and as intended to apply, only to matters involved in the regulation of commerce, and which Congress may rightfully subject to investigation by a commission established for the purpose of enforcing that act, we are unable to say that its provisions are not appropriate and plainly adapted to the protection of interstate commerce from burdens that are or may be, directly and indirectly, imposed upon it by means of unjust and unreasonable discriminations, charges, and preferences. Congress is not limited in its employment of means to those that are absolutely essential to the accomplishment of objects within the scope of the powers granted to it. It is a settled principle of constitutional law that 'the government which has a right to do an act, and has imposed on it the duty of performing that act, must, according to the dictates of reason, be allowed to select the means; and those who contend that it may not select any appropriate means, that one particular mode of effecting the object is excepted, take upon themselves the burden of establishing that exception.'"

We fail to find any difference in principle between the power of the Interstate Commerce Commission to require the attendance of witnesses and the production of books and records as a basis for rate-making and the exercise of corresponding powers by the State commerce commission as part of its duties to supervise the sale of securities.

The Supreme Court of Wisconsin has passed upon the constitutionality of the State securities act of that State in the case of *Halsey, Stuart & Co.* v. *Public Service Commission* (248 N.W. 458). Upholding the act as a proper exercise of the State's police power the court said:

"The regulations governing securities and security brokers constitute an exercise of the police power and to the extent that there are 'reasonable regulations affecting dealings in such products, for the prevention of fraud and in promotion of public health, safety, and general welfare', they are clearly valid" (*Kreutzer* v. *Westfahl*, 187 Wis. 463, 204, N.W. 595, 603).

The court even went so far as to hold that there might be a suspension of broker's license without a hearing without a violation of due process. Before leaving this branch of the case, we wish to call attention to the recent case of *People of the State of New York* v. *Pecot*, 188 N.E. 119. In this case it appears that Pecot was convicted of violating the general business law of the State of New York in failing to appear and produce certain records before the Attorney General as directed by a subpena. On appeal, without an opinion the Court of Appeals of New York affirmed the judgment of the lower court. The matter was taken by certiorari to the Supreme Court of the United States and that court refused to grant a review on the ground that no substantial Federal question was involved. (See U.S. Supreme Court Law ed. Advance Opinions, vol. 78–27, p. 538.) One of the leading cases on the question whether a provision in a securities act requiring the production of books and records and authorizing the examination of witnesses in connection with an investigation conducted under the State securities act is a violation of the due process clause of the fourteenth amendment is the case of *Dunham* v. *Ottinger* (243 N.Y. 423).

The New York law authorizes the attorney general to issue injunctions restraining persons from engaging in fraudulent practices in connection with the sale of securities whenever he has reason to believe from evidence satisfactory to him that such persons have engaged in such practices. It also authorizes the

bringing of criminal action in proper cases but gives the usual immunity to witnesses who have testified. In this case, plaintiff, a stock broker, brought an action to restrain the attorney general of the State from examining him and his books upon a subpena and order issued under the State Securities Act. The objection was raised that this action ran counter to the constitution because it is carried on without any knowledge of guilt on the part of the investigator. With reference to this matter the court very properly pointed out that if the person investigated was innocent such investigation might be to his advantage by freeing him from the burden of an unjust prosecution.

So we say here that if Banco is innocent the investigation now being conducted by the commerce commission will free it from the necessity for standing prosecution. Such an investigation cannot be held to be either a violation of due process or an unlawful search and seizure.

With reference to the question whether the authority given was a violation of constitutional rights because it authorized the attorney general to conduct a general investigation without any positive knowledge of guilt the court had this to say:

"The statute does not commission the attorney general to embark upon any roving course for the purpose of generally prying into the affairs of any person. Having authorized him to institute proceedings to prevent or punish violations of the statute, it authorizes him to acquire information, make investigations, and conduct examinations 'as to all the facts and circumstances concerning the subject matter which he believes it is to the public interest to investigate.' Or again, to examine witnesses under oath and require the production of any books or papers 'which he deems relevant or material to the inquiry.' This all is the end of enabling the attorney general to determine whether a situation exists which calls upon him for action under the provisions of the statute, and it is to be assumed that he will proceed in good faith and with knowledge of any regard for the principles which govern relevancy of evidence."

Even as the New York court said that it must be assumed that the attorney general will proceed in good faith and with knowledge of and regard for the principles which govern relevancy of evidence, so we say that the State commerce commission must be assumed to be proceeding in good faith in connection with their investigation of Banco.

The New York court goes on to point out that if through ignorance or intention the attorney general transgresses these principles, the victim of his oppressive action may appeal to the courts for protection. The same course is open to Banco and its officers under the law of Minnesota.

Specifically considering the due-process clause, the court said:

"It would be tedious and is unnecessary to consider at length the meaning of the due-process clauses of the Federal and State Constitutions as they are invoked against the statute. Certainly, before they can be successfully appealed to, it must appear that some substantial right of the person invoking them is about to be violated by an exercise of governmental powers which run counter to the spirit of our institutions and processes as they have been established by custom and settled maxims of law. It is impossible to find any basis for the claim that this statute proposes such a violation.

"The power to investigate and examine witnesses to the end of a better discharge of their duties has been conferred upon administrative boards and officials without successful challenge by so many statutes that it is undesirable to refer to them all."

X. THE STATE SECURITIES ACT AND THE COMMISSION'S ORDERS THEREUNDER DO NOT CONSTITUTE SUCH AN UNREASONABLE SEARCH AND SEIZURE AS TO BE IN VIOLATION OF THE FOURTH AMENDMENT OF THE UNITED STATES CONSTITUTION OR SECTION 10 OF ARTICLE 1 OF THE STATE CONSTITUTION

The contention is made on the part of plaintiff that the State securities law as applied in this case amounts to an unreasonable search and seizure in violation of the State and Federal Constitutions. In this connection, let us remember the English historical background which brought the fourth amendment into the Constitution of the United States and similar provisions into State constitutions. Let us remember the centuries of searches and seizures under general warrants and writs of assistance issued in behalf of the Tudors and the Stuarts and the kings and queens of Hanover, monarchs with autocratic power, to further their own selfish ends. It is a far cry from searches and seizures of this autocratic character to the beneficent purposes of our State securities act, the object of which is to protect the innocent and the weak against the machinations of the unscrupulous and the strong. How carefully the courts should proceed in bringing official action within the ban of constitutional provisions like those of the fourth amendment is well expressed by the opinion in the case of *People* v. *Milone* (119 N.Y.Misc. 22, 24):

"The evil which our enactment was designed to combat was, therefore, concrete rather than theoretical. The statute must be interpreted in that light. It must not be permitted to afford a haven of protection for crime, by embarrassing legitimate functioning of the police power. The danger in stating in theory a remedy for a concrete condition is that the theory is apt to run wild and outstrip the sound purpose which gave it life. The welfare and protection of law-abiding people should be neither sacrificed nor impaired by maudlin construction of a statute designed to benefit rather than to work against the best interests of organized society."

And so we argue here that this court should be very slow to extend the shield of section 10, article 1, of the State constitution to protect an institution which for years appears to have been guilty of deceit and concealment and fraud in connection with the sale of nearly $100,000,000 of stock.

In the case of *Standard Home Co.* v. *David* (217 Fed. 904, 916), the validity of the securities act of Arkansas was attacked because it authorized the bank commissioner to examine the business of investment companies. The court said:

"The act is also attacked upon the ground that it authorizes the bank commissioner, his clerks, accountants, and examiners, to examine the business of such investment company, and may require it to divulge any and all facts in connection with said business, whether or not the same relates in any way to securities proposed to be sold in Arkansas. The plaintiff is a corporation, and it is now well settled by the decisions of the Supreme Court of the United States that the right to inquire into the condition of corporations exists, and, if necessary for the purpose of enforcing a law, to compel the production of all books, letters, and other records, without violating the provisions of the fourth and fifth amendments to the Constitution of the United States." (*Hale* v. *Henkel* (201 U.S. 43, 74, 75; 26 Sup. Ct. 370; 50 L.ed. 652); *Consolidated Rendering Co.* v. *Vermont* (207 U.S. 541; 28 Sup. Ct. 178; 52 L.ed. 327; 12 Ann. Cas. 658); *Hammond Packing Co.* v. *State of Arkansas* (212 U.S. 322, 348, 349; 29 Sup. Ct. 370; 53 L.ed. 530; 15 Ann. Cas. 645); *Wilson* v. *United States* (221 U.S. 361, 383; 31 Sup. Ct. 538; 55 L.ed. 771; Ann. Cas. 1912D, 558)).

It is claimed by plaintiff that the commission's orders fail to describe with sufficient particularity, as required by section 10 of article 1 of the State constitution, the papers to be produced by plaintiff. In this connection we need only point out that the very nature of the investigation conducted makes impossible that absolute definiteness of designation which may be possible in other cases, and that the commission's orders were as definite as the nature of the case permitted. To require greater definiteness would be tantamount to prohibiting investigation.

As for all claims made with reference to the fourth amendment we need only point out that this amendment is applicable only to the action of Federal officers. In *Lloyd* v. *Dollison* (194 U.S. 445), the Supreme Court said:

"It is well established that the first eight articles of the amendments to the Constitution of the United States have reference to powers exercised by the Government of the United States and not those of the States. *Eilenbecker* v. *Plymouth Colony* (134 U.S. 31)."

Significant, also, is the holding of the Supreme Court of Minnesota in *State* v. *Pluth* (157 Minn. 145, 153), to the same effect.

"In *State* v. *Stofjels* (89 Minn. 205, 94 N.W. 675), this court held that incriminating articles (in that case intoxicating liquors) seized under a search warrant were admissible in evidence. Whether such articles were seized under a warrant or without a warrant could make no difference in determining whether using them as evidence would compel the defendant to be a witness against himself in the meaning of the constitution."

The proposition that the investigation of the books and records of a private corporation by an administrative body is not an illegal search or seizure in violation of the State constitution is very clearly shown by the decision of the Supreme Court in the case of *State ex rel. City of Minneapolis* v. *Minneapolis Street Ry. Co. et al.* (154 Minn. 401, 413). In that case the city filed a petition in the district court praying for a writ of mandamus commanding the Minneapolis Street Railway Co., the Twin City Rapid Transit Co. and the St. Paul City Railway Co., to permit the city to examine and inspect their books, records, accounts, documents, and other data of transportation companies affiliated with them to enable the city to prepare for a rate hearing before the Minnesota Railroad & Warehouse Commission. It will be noted that this was a request for an order for leave to investigate more sweeping in its language than the order of the commission in the present case and that as in the present case it was the order of an administrative body. In its decision with reference to this issue the court said:

"An inspection of its stock books will not subject the transit company to an unreasonable search or seizure in violation of rights guaranteed by the State and Federal Constitutions. It is too plain for argument that there is no invasion of the right to be secure in the possession of private papers and effects, when a public-service corporation is required to submit its stock books to the inspection of the representatives of the public, charged with the duty of ascertaining the value of the property of the corporation."

XI. THE SECURITIES ACT DOES NOT VIOLATE THE PROVISION OF THE STATE CONSTITUTION WITH REFERENCE TO A THREEFOLD DIVISION OF GOVERNMENT POWERS

In support of this proposition we refer to the case of *Porter, Auditor,* v. *Investors Syndicate* (287 U.S. 346), in which the court said:

"The statute plainly affords a remedy which, though in certain respects judicial, is in others administrative. The courts of Montana have not passed upon its constitutionality as affected by the quoted section of the fundamental law of the State. Such expressions of the Supreme Court as have been brought to our attention indicate that article IV, section 1, does not forbid the conference on the State district courts of administrative powers in connection with and ancillary to their judicial functions. *O'Neill* v. *Yellowstone Irrigation Dist.* (44 Mont. 492; 121 Pac. 283; *State* v. *Johnson,* 75 Mont. 240, 249; 243 Pac. 1073. Compare

State ex rel. Kellogg v. *District Court*, 13 Mont. 370; 34 Pac. 298; *Hillis* v. *Sullivan*, 48 Mont. 320; 137 Pac. 392.)

"An adjudication of the question by the State supreme court would bind us. (*Gulf C. & S. F. Ry. Co.* v. *Dennis*, 224 U.S. 503.) In the absence of such decision we are reluctant to construe a State constitution (*Louisville & N. R. Co.* v. *Garrett*, 231 U.S. 298), but as our decision requires that the alleged conflict of State statute and State constitution be resolved we must pass upon it (*Southern Ry. Co.* v. *Watts*, 260 U.S. 519, 522). In view of the Montana cases, to which reference has been made, we are not convinced that the statute is offensive to the Montana Constitution, and adhere to the judgment heretofore entered."

XII. THE COMMERCE COMMISSION HAS NOT LOST ITS LEGAL RIGHT TO INVESTIGATE THE SALES OF BANCO STOCK BY REASON OF THE FACT THAT SUCH STOCK IS NO LONGER REGISTERED NOR BY REASON OF THE FACT THAT BANCO HAS OFFERED TO WAIVE THE EXEMPT STATUS OF ITS STOCK.

The case of *State ex rel. Veigel* v. *Hardstone Brick Co.* (172 Minn. 328), which plaintiff may rely upon, differs very materially from the present case. In that case it appears that the commerce commission suspended the right of the Hardstone Brick Co. to sell stock on August 24, 1926 and ordered respondents to show cause on September 14, 1926, why the registration should not be canceled; that on September 1, 1926, the company requested the commission to cancel the registration; and that no stock was sold after the order for suspension of sale, August 24, 1926. The commission refrained from canceling the registration.

The commission asked for a financial statement on August 27, 1926, which was not provided. The company also refused to permit an audit of its books. In order to compel respondents to produce its books and records for examination and audit, a writ of mandamus was applied for. Relators demurred to respondents' return and their demurrer was overruled. The lower court was sustained by the supreme court. As this is a case of great importance in connection with the present matter we quote from the opinion at some length. On the question whether in a proper case the commission may issue subpenas and require the production of witnesses the court said:

"Section 19 empowers the commission to investigation and determine whether any securities, including securities exempted from registration, are fraudulent or being sold in a fraudulent manner, or whether any provisions of the act are being violated, and to take steps to prosecute those guilty of violations. The commission may issue subpenas and require the attendance of witnesses, and the production of books and papers. A natural person thus compelled to testify has immunity against any prosecution, except for perjury in giving such testimony.

"The power given the commission is drastic, but so long as it is exercised to protect the public against fraudulent securities it should not be hampered."

This shows that in a proper case the court may issue subpenas and require the attendance of witnesses and the production of books and papers.

The commission considers next the case where the securities are withdrawn from sale and a request submitted for cancelation of registration. Then, the court says, there is no longer any occasion to protect the public against their sale. The court continues: "Then there remains only the meting out of punishment, if to obtain registration or while it was in force any person connected with such securities violated the law." It was on this point that the court found the relator's pleading insufficient, because he failed to charge any specific violation of the law.

But let us note well that this is not the present case, for two reasons: First, the commission's order for investigation in the present case sets forth specific charges of violation of the law and defendants' answer sets forth with considerable definiteness specific charges of violations. Defendants are not embarked on a "fishing expedition."

There is also another fundamental distinction in the two cases. The stock sold by Banco during most of the time after its organization was an exempted security by reason of the fact that it was listed on the Chicago Stock Exchange. With reference to such a stock the commission had and has continuous power to guard against fraudulent sales. We emphasize this point. There is no cessation of power on the part of the commission over such stock for that of registration is withdrawn. On this point we quote from the decision two clearly-worded paragraphs (p. 331):

"The commission argues that, since it has power under section 19 to require an issuer or seller of securities exempted from the registration and license provisions of the act to submit to an examination of the books and records of the business, there is more reason to hold that it has power to compel the issuer or seller of registered securities to produce books and records for examination, even though the registration has been suspended and the party who obtained the same has requested its cancelation. When the purpose of the law is kept in view, namely, to prevent the sale of fraudulent securities and the fraudulent sale of securities, there seems to us to be a marked distinction between the two classes of securities.

"In the case of securities exempted from registration the duty of the commission is continuous to guard against fraudulent sales thereof, but as to those required to be registered the commission is to investigate their character before registration to ascertain whether inherently they are honest and not fraudulent, so that the public in buying them receive the value they purport to represent; and so long as the sale is permitted the power to investigate and to demand the production of books and records undoubtedly continues. But when the right of sale is suspended and the one who obtained the registration and license demands the cancelation and revocation thereof, there is no longer any occasion to resort to an examination of books and papers in order to protect the public against either a fraudulent sale of such securities or a sale thereof, whether they be good or bad."

Summarizing, we conclude that in the present case the Commission may exercise its power to issue subpenas and require the attendance of witnesses and the production of books and papers because:

First, it has alleged definite violations of the law by plaintiff.

Second, it is dealing with a security exempt from registration with reference to which it has a continuous duty to guard against fraudulent sales.

It is our understanding that a detailed provision of a law is to be so interpreted as to give it effect in accordance with the main purpose of the act of which it is a part. The main purpose of the State securities act is to afford to the public a greater degree of safety in purchasing securities by reason of the fact that the State commerce commission is authorized to make a comprehensive investigation of such securities before they are registered and to make investigations at any time to determine whether any securities, including securities exempted by section 2 of the act, are fraudulent or are being sold in a fraudulent manner. Stock of Banco, being listed on the Chicago Stock Exchange, is such an exempted stock. Now it is true, when the commerce commission's investigation had reached the point where it sought to learn about the stock pool operated by Banco, Banco rushed to the commission with a paper purporting to waive its exempt status. The act does not give to a company having exempt status power to waive that exempt status. Nor does it give to the commission the power to permit it to do so. Exempt status is a question of fact. Section 2, subdivision 5 of the act gives to securities listed on the Chicago Stock Exchange exempt status. Banco is so listed. That is a fact. Banco cannot waive the existence of this fact by saying it does so any more than one of its officers can waive his existence as a human being by saying he waives that fact.

It lies very close to ask: Why did Banco so precipitately seek to waive the exempt status of its stock? Why, if not in the hope of escaping further investigation? It would be an extraordinary interpretation of the securities law to hold that the commission may investigate to determine whether exempted securities are fraudulent and then to hold that, when the commission is on the threshold of finding damaging evidence, the door to further investigation must be closed providing the investigated company shall say: "Stop, stop! We waive our exempt status."

In further support of our contention we refer to the case of *Motor Finance & Guarantee Corporation* v. *Georgia Securities Commission et al.* (158 Georgia 75) in which the facts were as follows:

The license of plaintiff corporation to sell its stock in Georgia would have expired December 31, 1923. It returned its license and surrendered all rights to do business in Georgia as of January 1, 1923. Thereafter the Securities Commission investigated certain dealings of said corporation and decided that there were irregularities in the sale of stock to a certain person. Thereupon, on June 23, 1923, it issued its order directing said corporation to return to said person her promissory note given for said stock. It also suspended plaintiff's license until a financial statement called for had been submitted.

Upon receipt of these notices plaintiff filed a petition in court praying that the commission "be enjoined and restrained from taking any action whatsoever in the affairs of petitioner, and from making any official or other entry of cancelation or revocation of any alleged license of petitioner to do business in the State of Georgia, since no such license exists or has existed since June 30, 1923"; also, "that defendants be enjoined generally from interfering with the conduct of petitioner's business."

The request for injunction was refused in the lower court and the court's action was sustained by the Supreme Court.

XIII. DURING THE 3 YEARS PRECEDING THE ISSUANCE OF THE COMMISSION'S ORDERS THE SALE OF BANCO STOCK WAS FRAUDULENT BECAUSE THERE WAS EXCESSIVE VALUATION OF STOCK SOLD ON THE BASIS OF SUCH EXCESSIVE VALUATION OF ASSETS

Excessive valuation of corporate property makes a stock issue based on such valuation fraudulent as to buyers of stock. Insufficient consideration in sale of corporate stock makes the sale fraudulent as to corporation creditors.

The case of *Jose* v. *Utley, District Attorney* (185 Calif. 656, 199 Pac. 1037), gives us an excellent illustration of these two rules of law, namely, that excessive valuation of corporate property makes a stock issue based on such valuation fraudulent as to stockholders and that insufficient consideration in sale of corporate stock makes sale fraudulent as to creditors.

In this case action was brought to enjoin Utley, as district attorney, from prosecuting Truax for violating the securities act of California by sale of stock in an oil company.

The Imperial Pacific (etc.) Oil Co., an Arizona corporation, had acquired certain rights to drill for oil on four sections, 2,560 acres of land, in California in exchange for 2,496,000 one-dollar shares of its capital stock. Margaret Truax was engaged in selling 1,000,000 shares of this stock without a permit from the commissioner of securities of California. Dollar shares of stock were being sold at 15 cents. Even this price was predicated upon a total value of corporate property of $375,000, which was far beyond its true value. This action was brought to enjoin Utley, as district attorney, from prosecuting Truax for violating the State securities act.

The first question at issue was whether the manner in which this stock was issued and was being sold was fraudulent for the reason that there was not sufficient consideration in the original exchange of stock for drilling rights and too great a consideration in the sale by Truax. The court said:

"The respondent contends that the method of sale adopted, if stock is offered at 15 cents per share, was a representation to the public that the property of the corporation was worth at least $375,000—that is, 2,500,000 times 15 cents—and that it was in fact valueless. It is sufficient for us to say that it is manifest from the complaint that the issuance of the capital stock of the corporation was fraudulent as against creditors and stockholders, because of the excessive valuation placed upon the property acquired by the corporation, which brings the transaction under the rule announced first in *Vermont Marble Co.* v. *Declez Granite Co.* (135 Calif. 579, 67 Pac. 1057, 56 L.R.A. 728, 87 Am. St. Rep. 143) and adhered to through a long line of cases, the last of which is *Sherman* v. *S. K. D. Oil Co., supra,* holding such a transfer of corporate stock to be fraudulent as to future creditors, and that the representation upon the face of the stock was a false statement of the fact, calculated to deceive both future creditors and stockholders."

Having established the fraudulent character of the stock issue and the stock sale, the court considered next the question whether a court of equity could come to the aid of a party to the fraud and said:

"In view of the fraudulent nature of the transaction sought to be carried out, equity will not aid the plaintiffs by an injunction, even if it be conceded the law attacked is unconstitutional, and the threatened action of the district attorney is therefore erroneous. I is sufficient on this point to cite a decision of the United States district court in *National Mercantile Co.* v. *Keating* ((D.C.) 218 Fed. 477), wherein the constitutionality of the blue-sky law of Montana was attacked by a plaintiff who sought to enjoin the enforcement of the law; but as the plaintiff came into court with unclean hands, that court refused relief."

Let us apply these rules of law to the case of Banco. In the first big group of exchanges of stock Banco paid more than $10,000,000 more for the stock of a group of banks than the tangible asset value of such stocks. This price seems to have been an excessive allowance for good will. If it was, it was a fraud upon the creditors of Banco. Nevertheless, on such a structure of water, it proceeded to offer its stock at 50 and 62.50 and 72.50 and even tried to get 82.50, stock which apparently did not have tangible assets behind it at any time in excess of 37. That was a fraud upon the public that bought that stock.

Here was a double fraud; a fraud upon the stockholders in paying too much for corporate assets, and a fraud upon investors in stock in selling the stock at too high a price without revealing the presence of water or good will in the capital structure. The State of Minnesota has a right to ask questions about these fraudulent valuations and these fraudulent sales.

XIV. THE SALE OF BANCO STOCK WAS FRAUDULENT BECAUSE, DURING THE 3 YEARS PRECEDING THE ISSUANCE OF THE COMMISSION'S ORDERS, DIVIDENDS WERE VOTED AND PAID NOTWITHSTANDING THE FACT THAT THERE WERE NO NET PROFITS AND THAT THERE WERE LOSSES RUNNING INTO MILLIONS OF DOLLARS, AND BECAUSE THE PURPOSE AND EFFECT OF SUCH ILLEGAL DECLARATION AND PAYMENT OF DIVIDENDS WAS TO ENHANCE THE DEMAND FOR BANCO STOCK AND TO RAISE THE PRICES OF BANCO STOCK ABOVE ITS TRUE VALUE

It is a well-established rule of corporate law that dividends may be paid only out of earnings unless in the very nature of the business, as in the operation of a mine, there must be depletion of capital. 14 Corpus Juris, section 1209, makes the following statement:

"With the exception of dividends in liquidation, dividends can be declared and paid out of net profits only, or, conversely stated, when the payment thereof does not impair the capital stock of the corporation. * * * . If the capital stock has been impaired by the payment of the dividend, it is, nevertheless, unlawful, although the corporation is solvent at the time."

Corpus Juris, in section 1210, states the reason for this rule to be that to allow impairment of capital by the payment of dividends would be a fraud upon creditors and also a fraud upon stockholders because each stockholder is entitled to have the capital stock preserved unimpaired for the purpose of better carrying out the object for which the corporation was formed.

14 Corpus Juris, in section 1213, continues:

"In this country the courts have made no distinction between fixed and circulating capital but have generally taken the view that a corporation must maintain its capital stock at its original value before any dividends may lawfully be paid."

With reference to the question, whether dividends may be declared from any source except surplus or net profit, section 1949 of the Revised Code of Delaware, 1915, has this to say:

"No corporation created under the provisions of this chapter, nor the directors thereof, shall make dividends except from the surplus or net profits arising from its business. Dividends may be paid in cash or capital stock at par, but otherwise the corporation shall not divide, withdraw, or in any way pay to the stockholders or any of them any part of its capital stock, or reduce its capital stock except according to this chapter, and in case of any willful or negligent violation of the provisions of this section the directors under whose administration the same may happen shall be jointly and severally liable in an action on the case at any time within 6 years after paying such dividend to the corporation and its creditors or any of them."

As Banco is a Delaware corporation, it would seem to follow, from what has been said, that the dividend payments by Banco during 1931 and 1932 were clearly in violation of law.

That this is a correct interpretation of the Delaware statutes is shown by the following quotation from the Court of Chancery of Delaware, in *Kingston* v. *Home Life Insurance Co. of America* (101 Atl. 898, 903):

"The prayer of the bill on the subject is for an injunction to prevent the officers of the insurance company from declaring or paying a dividend upon its stock except out of actual earnings. This may be granted without much consideration of the facts, because it would be but a declaration of the statute law of the State which permits dividends to be paid only out of surplus or net profits arising from the business of the company."

Said the Federal district court in the case of *Corliss* v. *United States* (7 Fed. (2d) 455):

"It was true, as the agents stated, that the company had paid dividends, and in their judgment would continue to do so. This, of course, fairly implied that the dividends were paid out of net profits."

We believe we have established that dividends running into many millions of dollars were paid by Banco during 1930, 1931, and 1932, and that, in the aggregate, there were losses during said years running into tens of millions of dollars. It follows that during these years, in paying such dividends, Banco was guilty of a tremendous fraud both upon its then stockholders, by depleting its capital, and upon the public, by imparting to its stock an excessive market value.

XV. THE SALE OF BANCO STOCK MAY HAVE BEEN FRAUDULENT BECAUSE BANCO MAINTAINED A POOL, CONTRACTED TO KEEP HUGE BLOCKS OF STOCK OFF THE MARKET FOR 6-MONTH PERIODS, AND IN VARIOUS WAYS SOUGHT TO ALTER THE USUAL AND NATURAL CURRENTS OF SUPPLY AND DEMAND FOR BANCO STOCK, ALL, APPARENTLY, FOR THE PURPOSE OF RAISING THE MARKET PRICES OF BANCO STOCKS ABOVE THEIR NATURAL MARKET VALUE

Another fraudulent practice of which Banco appears to have been guilty is that of manipulating prices to its own advantage, or to the advantage of a favored group, by means of pools.

The question whether such manipulation of prices by means of pools is fraudulent is ably discussed in the very recent case of *United States* v. *Brown* (vol. 5, no. 3, Fed. supp. 81). In that case it appears that Brown and others were indicted for conspiracy to form a pool artificially to manipulate the price of certain stock on the stock market "without regard to the real value of the stock", and for using mails in connection with said fraudulent scheme. The question at issue was whether the indictment was demurrable because the scheme described for the use of a pool to manipulate prices did not constitute fraud. The court said:

"The theory pressed on me for the defendant McCarthy, as I understand it, is substantially this: That if two or more persons, through the operation of what is known as a 'pool' agree to raise the price of a security listed on a stock exchange, they may proceed to achieve that objective without being guilty of any actionable fraud, vis-a-vis, a member of the public who purchases that security relying on the exchange market quotations, on the theory that the maxim of caveat emptor applies. But that maxim applies properly only to free and open markets.

"When an outsider, a member of the public, reads the price quotations of a stock listed on an exchange, he is justified in supposing that the quoted price is an appraisal of the value of that stock due to a series of actual sales between various persons dealing at arm's length in a free and open market on the exchange, and so represents a true chancering of the market value of that stock thereon under the process of attrition due to supply operating against demand.

"If, however, the market for the stock listed on an exchange is a manipulated or controlled market, in which a group of insiders, in order to enable themselves profitably to dispose of their holdings, are artificially raising the quoted price of the stock on the only market to which any man who wishes to purchase that stock would inevitably resort, and an outsider buys in that market he would obviously pay more—how much more perhaps cannot be estimated and, in any event, in a criminal case of this kind, is not material—than he would have paid in a free and open market, and hence is a victim of unfair dealing by insiders. But he is entitled to fair dealing and should get it.

"Judges have properly set their faces sternly against any practices by which the right of fair dealing between man and man is in any way infringed, and, whenever there is any false representation made by word or act in behalf of a pool for the purpose of inducing the public to come into the market and buy securities it is held to be a fraud, and contracts between the insiders are held to be illegal and against public policy.

"The doctrine stems back to the case of *Rex* v. *DeBerenger*, Maule and Selwyn's Reports 67, decided in 1814. In that case DeBerenger and seven others were tried on an indictment for a conspiracy to raise the price of British Government funds by circulating the then false report of the death of Napoleon Bonaparte, and predicting that, consequently, peace would soon be concluded between the British King and the people of France, with the purpose of increasing the price of government funds and other Government securities on the 21st day of February 1814, and thus injuring any person who should buy funds or securities on that day.

"The defendants were convicted, and a motion was made in arrest of judgment. On this motion the case came before the Court of King's Bench en banc, and the judges were unanimous

in holding that the defendants were guilty of a conspiracy to defraud."

The State is not yet in possession of all the facts with reference to the pool operated by Banco in connection with the sale of its stock. We know Banco maintained such a pool within the 3-year period preceding the commission's orders. We know the pool involved at least 75,000 shares, or about $4,000,000, of its stock. We know the pool kept stock off the market. We know the pool was financed by Banco. Just how the pool was operated to accomplish these purposes we do not know because when the commission reached this phase of its inquiry its further investigation was halted by this court's restraining order.

Why is Banco afraid to have this branch of the inquiry pursued? What lies concealed within its records that must not be brought to light? We do not know. But in connection with the facts we do know about this pool and in connection with the other fraudulent dealing already brought to light, we cannot but come to the conclusion that the State has the legal right to go to the bottom of this matter.

XVI. DURING THE 3-YEAR PERIOD PRECEDING THE ISSUANCE OF THE COMMISSION'S ORDER PLAINTIFF DIRECTLY MISREPRESENTED TO THE INVESTING PUBLIC THE AMOUNT OF ITS NET EARNINGS FOR THE PURPOSE OF PROMOTING THE SALE OF ITS STOCK AND ADVANCING THE PRICE THEREOF

The facts being granted, and they have been fully presented, we believe it will be conceded that such misrepresentation in connection with the sale of stock is fraudulent and a violation of the State securities act.

XVII. A COMPARISON OF THE CASE OF FOSHAY *v.* UNITED STATES AND THE PRESENT CASE

Before we close we wish to make a comparison of certain phases of the cases of *Foshay* v. *United States* and *Henley* v. *United States* (opinion not yet available in printed form), with the present case, and to refer to the opinion therein rendered by the Circuit Court of Appeals of the Eighth Circuit. Foshay and Henley were convicted of having devised a scheme and artifice to defraud and to obtain money and property by means of fraud and of having used the mail to further such fraud.

The trial court in its instructions to the jury summarized that fraudulent scheme in this way:

"The heart of the fraudulent scheme charged is that the defendants schemed to and did falsely represent that, owing to the good management of the Foshay companies, they were earning and paying large dividends upon the stock of such corporations and that the stock furnished a safe and conservative investment, and that the companies were not earning dividends as represented, and were not earning any dividends, but were paying said dividends out of capital of the corporations for the purpose of inducing potential investors to purchase such stock."

The court found the facts to be that there were no net earnings and that the so-called "earnings" came from a write-up, or arbitrary increase in valuation, on the books of the company, of the value of its capital assets; that this, coupled with the fact that no word of explanation as to the true source of all these vast earnings was ever given to the public, was seriously fraudulent. The Court of Appeals said in its decision:

"It is significant that throughout the tons of company literature no word can be found to inform the public that the earnings were simply increases of valuations that Foshay and Henley were determining in their own minds and writing up on the books."

The court continued:

"Foshay and Henley solved the difficulty by their theory of creating values. When they acquired property and included it 'in their picture' (as their phrase was), a value was created. They determined for themselves how much the creation amounted to in dollars and cents and wrote it up on their books where it was carried into surplus. By calling such surplus 'earnings' as they did, the way was clear, and sixty millions of other people's money were brought into their control."

The court said further:

"They deliberately and intentionally, and with many crafty bookkeeping devices, covered up and concealed the real nature of their adventure; and falsely pretended that they were making money, earnings, net earnings, operating earnings, profits, and income. People bought Foshay securities because they believed the companies were making money and paying large dividends monthly out of the earnings."

The court very properly pointed out that fraud may consist, not merely in false statement, but also in concealment of fact. The court summarized a recent English case, as follows:

"In a recent conspicuous case in England the conviction of a company director was sustained, although his published prospectus did not contain any outright statement of fact found to be false. The statute denounced the publishing of any written statement known to be false in any material particular with intent to induce any person to become a shareholder. The prospectus reflected the payment of dividends over a period and although the dividends were in fact paid as indicated in the prospectus, they had been paid out of reserves accumulated in former years. The court held the jury justified in finding that the failure to disclose the source of the dividends amounted to concealment, on account of which the prospectus statement as a whole, was deceptive and false in a material particular. *Rex* v. *Kylsant* (101 K.B.Div., 1932 L.J.)"

The court expressed its view of the legal phase of this branch of the case as follows:

"It is well settled that the criteria of fraud evolved in civil cases are applicable to prosecutions under the mail fraud statute. Discussion of what amounts to fraud is found in greater volume in the reports of civil cases, but the principles are no different. To try to delimit fraud by definition would tend to reward subtle and ingenious circumvention and is not done. The particular facts determine its presence or absence on principles long settled by the courts in civil and criminal cases alike. Where company officers intentionally mislead prospective investors into the mistaken belief that their company is making money, by the false representation that it is currently in receipt of large net earnings, exceeding the current dividends when, in fact, there is not enough of current earnings to meet the expenses, an offense is presented under the statute (sec. 215) as soon as the mails are used" (*United States* v. *Rowe*, 56 Fed. (2d) 747).

When, in 1929, the Foshay Minnesota Corporation was changed to the Foshay Delaware Corporation there was set up on the books of the new corporation a bogus item of $1,434,000, variously designated "property, plant, and equipment" and "going-concern value." This fraudulent device for promoting sales of the new company's stock was severely denounced by the court.

This case emphasizes the following propositions:

1. That excessive valuation of corporate property, coupled with the sale of stock on the basis of such excessive valuation, constitutes fraud.

2. That a payment of dividends when there are no earnings and no true surplus, for the purpose of deceiving the investor as to the true value of the stock offered, constitutes fraud.

That concealment of facts in financial statements used in connection with the sale of stocks constitutes fraud.

Let us look at the present case in the light of the law and the facts presented in the Foshay case.

In this case, as in the Foshay case, there was deliberate overvaluation of corporate property. To cite only one instance, when the stock of the first group of banks was acquired by Banco they were paid for in stock of Banco exceeding by nearly $11,000,000 the tangible asset value behind the stock acquired by Banco. And this $11,000,000 of water or goodwill (we question whether there was one dollar of real value in it) this $11,000,000 of water was carried on Banco's books, and made the valuation basis of stock sale What was this but fraud, and deliberate fraud, on the investing public?

In this case, as in the Foshay case, there was payment of dividends, millions and millions of dividends out of capital, out of the very money which the investors in innocent trustfulness paid in. Millions and millions of dividends were paid out, year after year, in spite of losses running into tens of millions. Were these payments made without knowledge of the losses? Is it conceivable that the officers and directors of a corporation which in a period of 4 years was suffering a loss in the neighborhood of $50,000,000 could be ignorant of the losses? The motive is as plain as it was in the Foshay case, to broaden the demand for Banco stock, to push higher and still higher the price of Banco stock. Was such procedure fraudulent? The opinion in the Foshay case gives us an affirmative answer.

In this case, as in the Foshay case, there was artful concealment of the true financial condition; in both cases by concealing the fact that there were millions and millions of water in the capital structure.

In this case there were additional factors which may have the earmarks of fraud, particularly the great anxiety shown to keep the stock sold off the market by agreements in practically every exchange of stock to the effect that it must not be sold for 6 months and especially by the creation of a gigantic pool to trade in stock. Were the operations of that pool, also, fraudulent? Frankly, we are not sure. The strong hand of this court was laid upon the members of our commerce commission when they were about to reach that material, and therefore we do not know.

But that is the very reason why that commission should be authorized to proceed. Nearly 20,000 owners of stock, more than half of them in this State, have lost in the aggregate over $60,000,000. Why have they lost it? Who was responsible? They have a right to ask. The commerce commission, as their official representative, has a right to ask. That is one of the very purposes of section 19 of our act, to authorize investigation to determine whether any securities, including securities exempted by section 2 of the act, are fraudulent, or are being sold in a fraudulent manner. The act says "any securities." That certainly includes Banco stock.

XVIII. THE IMPORTANCE TO THE STATE OF HAVING THIS INVESTIGATION PROCEED FORTHWITH

It is of the utmost importance to the State to have this investigation proceed promptly. Three years is the period of limitations for criminal prosecutions in the State of Minnesota. If Banco can keep this case in court long enough, the statute of limitations will have run against all criminal proceedings, probably against a great many civil proceedings that should be instituted under the law against Banco and its officers. The court should not lend itself to thus shield Banco and its officers by the use of the process of the Federal court. If Banco and its officers are innocent of any wrongdoing, as they claim, then the investiga-

tion will not do them any legal injury. But if, on the other hand, they are guilty, the effect of granting the injunction may, in effect, be to give them immunity. To grant a stay of any kind and keep the proceedings tied up in court is to give them a temporary immunity which may possibly amount to a permanent one before all the facts can be discovered. It is therefore of the utmost importance to the State in the enforcement of its laws that the investigation before the commission proceed immediately.

XIX. IRRESPECTIVE OF ALL OTHER LEGAL RIGHTS, PLAINTIFF HAS NO STANDING IN A COURT OF EQUITY TO ASK FOR RELIEF, BECAUSE IT DOES NOT COME WITH CLEAN HANDS

Plaintiff is not entitled to equitable relief unless it comes with clean hands. We have in mind the old English case in which two highwaymen divided a certain heath near London for the conduct of their trade. One of them encroached on the other's territory, and the aggrieved bandit had the temerity to come into a court of equity for redress. Needless to say, his hands were not clean, and so he could have no relief in a court of conscience. We contend that plaintiff's hands are not sufficiently clean to justify this court in rendering assistance. It is true that we know only in part; but to us there seems to be enough revealed in the record, in excessive allowances for goodwill in the first exchanges of Banco stock for stock of leading banks of the Northwest; in placing the goodwill in the capital structure as having the actual value allowed in the exchanges; in failure to list this separately on financial statements; and thereby leading buyers to believe that Banco stock was worth face value or more; in declaring dividends running into millions of dollars in excess of net income, obviously for the purpose of deceiving the public as to the true value of Banco stock; in failing to state that such dividends were paid out of capital; in recommending stock as a good investment at constantly rising prices in spite of knowledge that losses were being sustained; in direct misrepresentation of amount of income; in entering into contracts restricting the sale of stock by the owners thereof, for the obvious purpose of maintaining an artificial and false price level; and in forming a pool to deal in vast amounts of Banco stock, apparently for the purpose of keeping up prices above true and fair price levels, we find fraud of so unmistakable a character that we cannot believe a court of conscience will condone it and grant relief.

We are considering a matter of the utmost importance to the people of this State and this Nation. Nearly 20,000 people hold Banco stock; nearly 11,000 men and women of Minnesota are among these stockholders. If there was no fraud, no write-up of values, no illegal concealment of material facts, no deliberate misstatement of material facts as to amount of income, no illegal payment of dividends out of capital, no illegal use of pools to raise prices of stock, the management of Banco can prove its innocence by showing the State its books and records. If there was fraud, the State, as the guardian of the rights of the investing public, is entitled to investigate. To begin with, Mr. Decker said Banco welcomed this investigation. Why has he changed his mind? Why has Banco changed its mind? Why this sudden discovery that the investigation may cause irreparable injury?

Within the last 4 weeks the cabinet of a great nation has fallen, and the streets of Paris have run red with blood in protest against frauds and losses of less magnitude than appear to lie concealed in the records of Banco. The people of this State are entitled to find out why and how. The commerce commission stands ready to continue this investigation. We have the utmost confidence that this court of equity will not stay its hands.

Respectfully submitted.

HARRY H. PETERSON,
Attorney General,
HARRY W. OEHLER,
Deputy Attorney General,
ROGER S. RUTCHICK,
Assistant Attorney General.
MATTHIAS N. ORFIELD,
Assistant Attorney General,
Attorneys for Defendants, 102 State Capitol, St. Paul, Minn.

Mr. Speaker, I yield back the remainder of my time.

Mr. BYRNS. Mr. Speaker, I move that the resolution and the charges be referred to the Committee on the Judiciary.

The motion was agreed to.

Mr. BYRNS. Mr. Speaker, on yesterday the House made a special order granting to the gentleman from New York [Mr. SIROVICH] 1 hour in which to address the House on Monday morning. I have been advised that because of previous engagements it will be impossible for the Doctor to be here on Monday morning; and I now ask unanimous consent that the order be transferred to Tuesday, and that on Tuesday immediately after the reading of the Journal and the disposition of business on the Speaker's table the gentleman from New York [Mr. SIROVICH] may be permitted to address the House for 1 hour.

Mr. PATMAN. Mr. Speaker, reserving the right to object, and I shall not object, I merely desire to get some information from the majority leader. Today we have no business of importance, I presume, to take up. Would the majority leader bear with some of us while we make talks on subjects that we are interested in?

Mr. BYRNS. I shall be delighted to bear with the gentleman and also to listen to him, as I always am; but I may say to the gentleman that there are a couple of election contests which can be disposed of very quickly, and I hope the gentleman will not submit his request to address the House until those cases are disposed of.

The SPEAKER. Is there objection to the request of the gentleman from Tennessee?

There was no objection.

SUBSISTENCE HOMESTEADS IN THE NATIONAL RECOVERY PROGRAM

Mr. MARLAND. Mr. Speaker, I ask unanimous consent to address the House for 1 minute, and to revise and extend my remarks at this point on the question of subsistence homesteads.

The SPEAKER. Is there objection to the request of the gentleman from Oklahoma?

There was no objection.

NATIONAL RECOVERY PROGRAM—BACK TO THE LAND

Mr. MARLAND. Mr. Speaker and Members of the House, it is impossible for me, in the brief time permitted, to discuss more than one phase of the national-recovery program.

I will, therefore, confine myself to the discussion of that one in which all our States may cooperate.

This is the back-to-the-land movement.

At this point I wish to give proper credit for many of the facts and figures recited to a pamphlet called "Back to Earth", published by William Wallace Carey, of Los Angeles, Calif.

Between the years 1914 and 1930 more than 20,000,000 of our people migrated from rural America to the cities:

United States Census figures

1910 population in urban territory	42,166,120
1930 population in urban territory	68,954,823
	26,788,703

The movement of that many human beings in so short a time is probably without a parallel in history.

This great movement to urban centers started shortly after Europe went to war in 1914.

Orders for munitions and war supplies poured into the United States.

Our mines and factories speeded into action.

The need for labor in the cities was acute.

The price of labor was bid up.

Farm labor flocked to urban factories.

Farmers and their wives left their farms to enjoy the new high-priced market for their labor in the cities.

Tractors and improved farm machinery filled the void on the farm left by the trek of farm labor to the factories.

When the war was over, 4,000,000 young men were released from military service. Many of these came originally from rural districts, but few returned to the farms.

A building boom swept the country from coast to coast.

All this additional population crowded into the cities, required new homes.

That meant new subdivisions, extensions of streets and boulevards, the increase in public-service facilities, all requiring more and more city labor.

In the 10 years preceding the crash of 1929, the Nation spent a yearly average of almost $7,000,000,000 upon new construction work.

This building boom gave employment to millions who must today be rated as unemployed destitute and has left us with billions of dollars of frozen investments in empty, unprofitable buildings.

Following the war boom we had the automobile boom, the gasoline boom.

Gasoline was gold, and so started the stupendous petroleum boom.

Men flocked to the oil fields, many of them from farms, and were engaged in putting down wells, extending pipe lines, and building refineries.

The idea was widely accepted that as there was no limit to the market for automobiles there could be no limit to the demand for petroleum, for gasoline, and lubricants.

Development continued until there is now a potential production of finished products far in excess of the actual demand.

Then came the luxury boom. Salesmanship became a profession and the city and country workers mortgaged their future earnings to keep pace with their neighbors in the acquisition of luxuries.

Then came the greatest boom of all, the stock-market boom, the get-rich-quick craze, which swept the Nation and finally collapsed in 1929.

While all this was happening in the cities, farming had fallen upon evil days.

To meet the great wastage of the war, farming in this country had been pushed far beyond the bounds of normal consumption.

After the war, with no more wheat being sunk by submarines, with no more cotton being exploded in ammunition, with no more heavy orders for meat for combatant soldiers, a surplus began to pile up, and prices dropped.

Farmers turned to other crops than war staples.

They borrowed money and bought cows until butter and milk and cream followed beef and pork and wheat and corn downward to unprofitable price levels.

Then came the collapse; the disappearance of billions of dollars of supposed values. We had had a prosperity which was based upon an impermanent foundation, and that prosperity collapsed completely, utterly.

In the past 4 years the Nation has floundered, who can say that important progress has been made toward anything like general reemployment?

It is true that millions have been put to work on various public works, but this costly forced construction work is not a remedy; it is only a palliative, a temporary expedient.

Now we have all these people stranded in the cities—men, women, children—fellow Americans.

What have we done for them? What can we do for them?

This is the condition which confronts us: Millions of Americans who a few years ago considered themselves home owners and independent, now find themselves homeless and dependent upon public charity, living in cities where nature provides nothing but where every necessity of life—food, fuel, shelter, clothing—must be bought and paid for day by day with money.

Back in the boom days one of our most popular slogans was: "Own your own home", and 8,000,000 individual residences were built in the United States in those days to be sold to heads of families.

The owners now find themselves slaves to mortgages and taxes on property they can no longer afford to occupy.

Besides these homes, there stand in the cities which enjoyed great growth (and these are the cities in which there is the greatest unemployment), mile upon mile of apartment houses, flats, store and factory buildings which are unable to carry the fixed charges against them.

When we talk of reestablishing prosperity in the cities by renewing building operations, is it not time to ask who is going to finance the construction of more homes, office buildings, apartments, and so forth; who is going to live in them when they are completed; who is going to pay rent and taxes on them?

The lowest estimate that can be put upon the number of unemployed men in our cities today without the ability to pay rent and purchase food is 10,000,000.

Evidently something must be done to move these people from the urban centers back to the land from whence they came. The credit of the Nation cannot stand the load of providing a dole of approximately $4,000,000,000 annually to keep them in idleness, which would be the amount necessary to support these people at the minimum maintenance requirements.

Considered in family groups, the minimum estimate of maintenance per person is $12.50 per month. This estimate is described by the Red Cross as inadequate, and the estimate of that organization, varying in localities, runs about 50 percent higher.

While I am calling attention to the necessity of restoring national balance by returning millions of people from the cities to farm life, the subject of farm relief is paramount in all political discussions.

The question naturally arises if the farmers of the Nation are already in distress, why send more people back to the land to complicate further the problem of the farmer.

What this movement back to the land intends is a return to diversified, self-sustaining farming as distinguished from industrialized farming.

Such a return is also recommended for those already on the farms as a remedy for the conditions underlying their current distress.

The farmer must return again to the day when the farm was a place to live and bring up a family, not an industrial enterprise.

The farm should provide a comfortable living for the family that operates it.

It should provide a supply of food, clothing, fuel, and shelter, insofar as possible, from the land itself, and provide money for purchasing necessities and articles which the farm cannot produce, and to pay taxes from the sale of the relatively small surplus.

We must have fewer single-crop farms. The chances for financial success are too much against the single-crop farmer.

What he gets for his wheat is the Chicago quotation, minus the commission of the Chicago broker, minus the freight charge to Chicago, minus the local elevator man's profit, minus the cost of local handling and grading.

What he pays for the bacon he buys is the price for which the hog farmer sold the hog, plus the hog buyer's profit, plus the freight to the stockyards, plus yardage, plus the livestock broker's commission, plus the processing cost, plus the packer's profit, plus the freight to his local store, plus his local storekeeper's profit.

Mr. Speaker, there is, without question, acute distress among many farmers of the Middle West, and great efforts are being made to raise the prices in the United States of certain staples which have been greatly depressed in the world markets.

If, upon a 160-acre farm there was not one family—a renter or an owner with a staggering mortgage debt—but four families, each family owning its home, raising diversified crops, aiming at their own necessities, producing small but varied surpluses to sell for the cash with which to pay their cash expenses, the actual buying power of that quarter section of land for what American industry supplies would be a net amount greater than the buying power of the one family now which produces a few things, sells everything, and buys everything.

With such rural districts farm prices would be in better adjustment. It would not seem necessary to destroy growing crops.

The self-supporting farm is the objective of the back-to-the-land movement.

A small farm with a wood lot for fuel, a pasture for cows, an orchard with hives of bees, a dozen acres or so of plow land, and a garden for berries and annual vegetable crops.

There is always plenty on a farm such as this.

In winter a fat hog hangs in the smokehouse and from the cellar come jellies and jams and preserves, canned fruits, and dried vegetables. In the summer there is a succession of fresh fruits from the orchard and fresh vegetables from the garden.

There is always comfort on this farm.

The pure air, the deep silence of the night, the healthful outdoor work, all make for sound and restful sleep.

The house is tight against the wind and rain; wood fires keep it warm in winter, trees and vines shade it in summer. The furniture is not overstuffed, nor is it covered with tapestry, but it is made to be comfortable.

The living room is not without books, old friends and new. There are magazines and a weekly newspaper on the table.

This farm has neighbors, they stop, in passing, for a chat over the fence; they drop in evenings for longer visits. They are friendly and helpful neighbors, always ready to help in any hour of need, and when occasional farm tasks require a crew of men.

There is always time on this farm. Work begins early in the morning with cows to be milked and turned to pasture before breakfast, and there are still chores to be done after supper. But that does not mean continuous driving work from sun to sun. There is no hurry, no high pressure. Except for a few weeks in harvest time the farmer takes long "noonings." There is time to read. There is time to think. There is time to talk with neighbors as they pass along the road.

There is always employment on this farm. When there is not work with the stock or crops, there are fences to build, improvements and repairs around the house and yard, wood to be cut and brought up.

Our Nation's task is to use the human material now wasted in the cities and create a social class which has been largely abolished through the industrializing of the farm.

And the task for the States is to cooperate fully with the Nation.

To form such a farm unit anywhere in the United States, such as has been described; to provide buildings and equipment; to provide livestock and feed; to provide guidance and education, the actual cost in dollars and cents would be far less than it would cost to keep a family in an average American city for 3 years.

The Red Cross estimates the minimum cost of providing everything for a family of four at $600 per year.

The national plan contemplates organizing farming communities into industrial units so that in winter farmers may add to their cash incomes by working for wages in a central plant, put into operation to supply their need for clothes, furniture, tools, and so forth. That this is entirely practical is maintained by no less eminent an industrialist than Henry Ford, who is already planning to move industry from the city to the country.

The cooperation of the several States of the Union with the Federal Government can be taken for granted, because this is their problem as well as that of the Union.

Nearly all the States have insolvent land, or other State-owned land, upon their hands upon which they would welcome settlers.

The active cooperation of State agricultural colleges, each with a force of scientists especially versed in the crops and conditions of the State's area to provide guidance, may also be taken for granted.

The States, being closer to the problems of their own settlers, would naturally prefer arrangements by which the development and financing of each settlement would be left to the State in which the land is located.

Financing should be set up on a self-liquidating basis. These farms should not be a gift to the owners, but should be sold on a long-time partial-payment plan, in which the annual charge should not exceed $20 a month, or $240 a year.

Let us analyze the financial side. A farm consists of land, which has been cleared, plowed, prepared for cultivation; of improvements, which consist of materials and labor; of implements, seed and plants, and livestock—

Land	$1,000
Materials and labor	1,000
(This for the house, other buildings, fencing, etc. It is proposed to build farmhouses, not bungalows or villas.)	
Implements and livestock	500
	2,500

The farm unit should consist of land from 5 to 40 acres, dependent upon its location and the character of the soil. A comfortable farmhouse with outbuildings and sheds, improvements, seed, and livestock, the total to cost approximately $2,500.

Unemployed men in the building trades should be organized into squads and put to work making the necessary improvements.

These units should be financed by the State and, where necessary, the State should be enabled to rediscount its financing with the Federal agencies.

Under a recent order of the Secretary of the Interior, the Honorable Harold L. Ickes, a corporation was organized to be known as the "Federal Subsistence Homestead Corporation", chartered under the laws of the State of Delaware.

It will serve as a vehicle through which subsistence-homestead projects will be set up and administered under the National Recovery Act, which provided a fund of $25,000,000 as a revolving fund for initiating this program.

The Federal Subsistence Homestead Corporation has already allotted funds to over 20 subsistence-homestead projects.

These projects contain from 50 to 400 homestead units each, located in 15 different States, several in the bituminous-coal fields of West Virginia.

More than 2,000 separate applications for projects have already been made to this Corporation, and over $4,000,000,000 have been asked for by the authors of these projects.

The cooperation of every State in the Union is desired in connection with the establishment of these projects.

Corporations should be established under the laws of the State for each of these projects, whether the project contemplates 50 or 500 units.

The assistance and advice of the agricultural colleges of the States should be obtained in the examination and survey of the land to be acquired and in the subdivision of the land after acquisition.

The back-to-the-land movement is a necessary part of our national planning and a necessary part of the economic planning of every State in the Union. The cooperation of the authorities of our States in this great movement is most necessary to its success and to the solution of the problem of unemployment in every State.

In Oklahoma, the State which I have the honor to represent, we had last winter from 100,000 to 150,000 families on the Federal Emergency Relief Administration rolls, with a total of over 750,000 members receiving aid.

Many of those families would be glad of the opportunity to move onto a subsistence homestead farm.

In one county in my State over 5,000 families have already signed applications for subsistence homesteads, and made affidavits that their unemployment situation makes such a movement necessary and that they would engage to live upon them and pay for them over a period of 20 years.

Corporations could be organized in every one of our 77 counties immediately, to establish projects of from 500 to 5,000 units in each county.

Only leadership by our State authorities is needed to develop fully these projects.

It is such leadership and cooperation with our National Government in its back-to-the-land planning that I urge upon my State and all other States in the Union.

ELECTION CONTEST—CASEY *v.* TURPIN

Mr. KERR. Mr. Speaker, I call up a privileged resolution in the matter of the election contest of John J. Casey *v.* C. Murray Turpin.

The Clerk read as follows:

Resolution 345

Resolved, That John J. Casey is not entitled to a seat in the House of Representatives of the Seventy-third Congress from the Twelfth Congressional District of the State of Pennsylvania.

Resolved, That C. Murray Turpin is entitled to a seat in the House of Representatives of the Seventy-third Congress from the Twelfth Congressional District of the State of Pennsylvania.

Mr. KERR. Mr. Speaker, I move the adoption of the resolution.

The resolution was adopted.

A motion to reconsider was laid on the table.

THE VINSON BILL

Mr. BRITTEN. Mr. Speaker, I ask unanimous consent to address the House for 20 minutes.

Mr. BLACK. On what subject?

Mr. BRITTEN. On a subject that is rather important and in which the gentleman is very much interested, the Vinson bill, and certain elements connected with it, the Navy bill.

The SPEAKER. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mr. BRITTEN. Mr. Speaker, this morning while the Committee on Naval Affairs of the House was considering the aviation report, a British subject, in violation of the rules of the House and of the rules of the committee, attempted to talk to the committee and to the chairman with a view to influencing our judgment.

I think this is unpardonable. The gentleman's name—I have never seen him before—is Maj. Charles MacKenzie-Kennedy, a British subject, who says he is an expert on aviation. From authentic information received by two congressional committees this self-styled major is not an authority on aviation, but, on the contrary, is a man whose designs might be very dangerous to the best interests of aviation in the United States. Reports from England, as well as from this country, indicate quite clearly that MacKenzie-Kennedy is a man in whom no reliability or responsibility should be placed; and as far as I am concerned, I shall continue to object to his presence before the Committee on Naval Affairs of the House.

This recalls to my mind the question of a British diplomat in the United States, a consul general at New York, who has been there for years. His name is Gerald Campbell. I am now calling upon the Secretary of State for his recall from the United States because of his personal opposition to legislation that was pending before the American Congress.

I will later refer to a number of instances in the past where foreign diplomats of our own as well as of other countries have been recalled when their usefulness, either to their own country or to the country to which they were sent, ceased.

Mr. Speaker, I waited until the Vinson bill had been signed by the President before calling to the attention of the House and to the Department of State, a letter from a New York friend together with a clipping from the New York Herald Tribune of Tuesday, February 20, 1934, which recounts the presence of several hundred men and women at the Town Hall Club, 123 West Forty-third Street, New York City, at a meeting of the Women's International League for Peace and Freedom, when a resolution was adopted opposing any further expenditures to increase the Navy. The Vinson bill was their target and among the speakers were the British Consul General Gerald Campbell and Miss Estelle Sternberger, executive director of the radical organization known as "World Peaceways."

To further the work of the Women's International League, another radical organization, $529.55 was collected from those present and the league immediately prepared for another meeting in Washington, D.C., to prevent the passage of the Vinson bill in the Senate and also to prevent its final approval by the President.

Organizations like the Women's International League, World Peaceways, National Council for the Prevention of War, American Civil Liberties Union, Foreign Policy Association and others, manage to keep within the law by not broadcasting the destruction of our Government, but they are always found on the borderline of socialism, bolshevism, and communism and while I would not take from any citizen the very broadest interpretation of free speech, I have always regarded these organizations as dangerous to the public welfare and inimical to a proper national defense.

When a foreign diplomat is granted the courtesies of our land, it is certainly expected that he will keep out of political entanglements within the borders of the United States and to do less than this, has in the past justified the immediate recall of a number of them.

Mr. Speaker, I will read into the RECORD an article from the New York Herald Tribune of Tuesday, February 20. February 20 was before the date of the passage of the Vinson Act as you will recall.

The article follows:

WOMEN FIGHT NAVY INCREASE—LEAGUE FOR PEACE OPPOSES FURTHER EXPENDITURES

Several hundred men and women gathered last night at the Town Hall Club, 123 West Forty-third Street, at a dinner meeting of the New York State branch of the Women's International League for Peace and Freedom, adopted a resolution opposing any further expenditures to increase the Navy. They also voted unanimously to endorse the resolution now in the Senate for an investigation into activities of the armaments, munitions, and shipbuilding industries.

Among the speakers were Heywood Broun, columnist for the New York World-Telegram; Gerald Campbell, British Consul General at New York, and Miss Dorothy Thompson, former newspaper correspondent in central Europe. To further its work the league obtained collections and pledges totaling $529.55 at the meeting.

I know that you gentlemen of the House will agree with me that the very broadest possible interpretation should always be placed upon the question of freedom of speech and freedom of the press for American subjects within the United States. We, of course, disagree in many directions with our constituencies and with other citizens of the country, and I have not the slightest objection to their difference of opinion with me on matters affecting the Navy, the national defense, the immigration, or what not, but I do object to a British Consul General making a speech opposing the Vinson bill and interfering with our proper national defense at a public meeting like this, and assisting in the collection of $529 in order to stifle legislation now pending before Congress. This kind of foreign propaganda must be stopped. It cannot be treated too roughly. It usually occurs at one of these so-called communistic or radical meetings.

Mr. DELANEY. Will the gentleman yield?

Mr. BRITTEN. I yield to the gentleman from New York.

Mr. DELANEY. As a matter of fact, it is not confined to these meetings. The gentleman knows from a report we received this morning in the Naval Affairs Committee that the commentators on the air of British origin are passing out this same sort of propaganda and that they have their agents in Washington working on the same problem.

Mr. BRITTEN. I know that was done in a national hookup before the Vinson bill was passed.

Mr. BLANTON. Will the gentleman yield?

Mr. BRITTEN. I yield to the gentleman from Texas for a question.

Mr. BLANTON. The gentleman from Illinois knows that Great Britain is a good friend of the United States and we are their good friend. There are binding ties between us, notwithstanding certain men now in power have forgotten all gratitude, and are not now paying a debt of honor. Because some subject of whom the British Government knows nothing, Maj. Charles MacKenzie-Kennedy, attempts to talk to one of our committees, or because Gerald Campbell in New York attends some pink dinner or makes a speech, that does not have a thing to do with our action here in this Congress.

Mr. BRITTEN. It may.

Mr. BLANTON. Who would be influenced?

Mr. BRITTEN. Oh, there are many organizations that are influenced. The English Speaking Union, for instance, supposed to be composed of Americans wholly, is opposed to our adequate national defense and thoroughly pro-British.

Mr. BLANTON. Let us remember that the British Government is our friend and we are their friend.

Mr. BRITTEN. I hope they will indicate their friendship by paying their debts.

Mr. BLANTON. They have been paying them, and I believe they will pay them. They are being guided by unwise leaders just now, but eventually the thoroughly honest natural debt-paying instinct of the English will reassert itself. I believe they will be one of the governments that eventually will pay their debt to us in full. I have absolute confidence in the honesty and integrity of Great Britain.

Mr. BRITTEN. On yesterday morning the Chancellor of the Exchequer of Great Britain, occupying a position like our Secretary of the Treasury, took the floor and amid the glee of his audience he told them about the reduction of

taxes, about the returning stability of the country and of the renewed prosperity of the country, and at the same time said, "We are not going to pay anything on our indebtedness to the United States."

Mr. BLANTON. That was a temporary aberration of one individual. That Chancellor of the Exchequer is not a true Englishman. Great Britain will repudiate him just as he attempts dishonestly to repudiate their just debt of honor due us.

Mr. BRITTEN. I am talking about a scene in the British Parliament.

Mr. BLANTON. Such a scene is unnatural there.

Mr. BROWN of Kentucky. May I ask if that glee was not shared by the Hearst newspapers?

Mr. BRITTEN. No; it was not. That would be very unnatural.

Mr. BROWN of Kentucky. I judge so from their editorial this morning.

Mr. BRITTEN. It should not be shared by the Hearst newspapers or anyone else in the United States. We should be very seriously concerned about this refusal to pay us at a time when England is exuberant over a surplus of some $200,000,000 this year in their treasury.

Mr. BROWN of Kentucky. I did not mean their refusal to pay. I refer to the glee of the Hearst newspapers which was over the fact that the Chancellor of the Exchequer over there announced a reduction in taxes.

Mr. BRITTEN. I do not think there is a more patriotic organization of newspapers in the United States than the Hearst papers.

Mr. BROWN of Kentucky. I may say to the gentleman that I think the height of demagoguery is reached by the Hearst papers when on the same editorial page they call on us to pay a billion dollars to bank depositors and then call everybody that wants to vote for taxes a demagogue. You cannot cut off all revenue and vote for every appropriation and come out even.

Mr. BRITTEN. I am sure the gentleman will not condone the action of any foreign diplomat to this country when he interferes with legislation pending before this House.

Mr. BLANTON. But do not charge Great Britain with it. Let us just ignore those two fellows who could not influence anybody.

Mr. BRITTEN. I am talking about a foreign service representative of Great Britain. The gentleman from Texas persists in disregarding my position. He evidently does not wish to be enlightened.

Mr. Speaker, in the hope I may get 5 minutes' additional time to tell a story that is very apropos about an incident that occurred on the floor some years ago—

Our dear old friend Martin B. Madden was having quite a heated colloquy with Ben Johnson from Kentucky, an admirable man and a caustic debater. They were equally partisan.

They got into such a heated colloquy here that one would imagine they were going to strike each other and, finally, Mr. Johnson invited Mr. Madden outside, and Martin B. stood up—you all know he had a wooden leg—and he said: "I will say to the gentleman that in fisticuffs I have never been educated, but if the gentleman wishes I will match my wooden leg against his wooden head anytime." [Laughter.]

Mr. COCHRAN of Missouri. Admirable men and both bitter partisans, but gentlemen always.

Mr. BRITTEN. Yes. I agree with the gentleman. I do not object to partisanship on the floor every once in a while. I think it is a good thing.

One of the reasons I am objecting to the speech of this British diplomat is because of the place where it was made, more or less surrounded by radical propagandists.

Communism is finding its way into every channel of American life. Hardly a day passes but what some press association carries the announcement of a vote in some college or a condition at some university or some occurrence where men are assembled where the serpent of communism is grinding from beneath and from within where you cannot see it, with the view of destroying American institutions.

On April 1, just this month, there was a story carried by the Associated Press from San Pedro, Calif.:

ADMIRAL HEARS REDS TRY TO STIR SAILORS TO REBEL

SAN PEDRO, CALIF., April 1.—Rear Admiral Adolphus Andrews, chief of staff of the Battle Force, said tonight an investigation by naval officials of asserted efforts of communists to undermine the morale of the fleet had been ordered.

The investigation followed the arrest of four men on charges of illegally distributing a magazine entitled "Shipmate's Voice", which laid stress on an alleged mutiny in the British Atlantic fleet in 1931.

San Pedro police tonight arrested John C. Britton, 31, at a communist rendezvous and seized a large quantity of pamphlets, magazines, and books, all of which they said were seditious. One of the articles, the officers said, urged Hawaiian labor to organize against the oppression of Yankee imperialism and confiscate canneries, banks, plantations, and other commercial and industrial institutions.

This Associated Press story I just read is from the Chicago Tribune of April 2, and the following day the Universal Service, from Paris, to show you how closely these things are allied, quotes the famous communist newspaper L'Humanite from Paris, as follows:

Communist Party activities in the United States are bearing fruit.

Continuous maneuvers of the American Navy are accentuating the discontent among overworked sailors, who know they are being prepared for death in a Pacific war.

Communist literature is being distributed aboard American ships recalling the British Navy mutiny of 1931. Numerous communist sailors now have cells on the ships.

This proves that the fight against war and for antimilitary works is being carried out vigorously in the United States. It is an example to us.

There is a great danger in allowing an important man who represents a big country like Great Britain to express himself publicly in places like this against legislation that is pending before the American Congress. We do not do it in England, and they should not do it here.

The Chicago Tribune Press Service of March 30 prints a story that is most astounding. It refers to the colleges of the country, the big universities, where our best minds are supposed to be.

The news article says that inquiry among some of the larger universities and colleges of the country indicates that pacifism, socialism, and even communism is gaining considerable ground among the student corps and that the Ohio State University has recently expelled a group of students for refusing military instruction.

Mr. Speaker, at Harvard last week it was reported—at Harvard, the so-called "highbrow" university of America—that 229 students declared that they would refuse to bear arms in any war in which the United States might become involved; 515 stated that they would fight only in case of an attempted invasion by a foreign power.

In other words, they would not fight unless Mexico or Canada or some other country came over here and actually landed on American soil.

Mr. Speaker, 326 were willing to bear arms at any time on the call of Congress. It would appear from these figures that only one third of the Harvard students could be depended upon to show real patriotism in time of need and emergency. According to a statement of the National Council for the Prevention of War (an ultra-pacifist organization), a Nation-wide survey recently conducted by an intercollegiate pacifist organization showed that out of a total of 21,725 students voting, 8,415 took a definite and uncompromising stand against war and the conduct of arms, 7,221 asserted that they would fight only in case of invasion, while 6,889 were ready to bear arms whenever this country became involved in war. Again these figures indicate that but one third of the collegiate student corps can be depended upon in the event of an emergency. It is said that the Nation-wide poll included 65 institutions in 27 States.

I am now calling upon the Secretary of State to look into this meeting held last month and if a British diplomat assisted in the collection of funds to influence legislation pending in Congress, and he is listed in our Congressional Directory which you have before you as an important consul general—if he made a speech attempting to influence legis-

lation and to destroy the American national defense he ought to be ordered out of this country before he is recalled.

That meeting was held for the sole purpose of defeating the Vinson Navy bill and if Consul General Campbell was present and addressed the audience at all, of course his recall should be instituted at once. Delay would but bring criticism upon our own Department of State. This would be too bad.

I am going to cite a few instances of recall in the past. It is not a new or an unusual thing to request the recall of a foreign representative.

Mr. Speaker, in April 1793, the newly appointed French Minister, Monsieur Edmond C. Genet, arrived at Charleston, and before proceeding to Philadelphia to present his credentials to President Washington, he began to fit out and commission privateers to prey on the commerce of Great Britain, in violation of the neutrality of the United States. When he was told that these irregularities should cease, he refused and expressed contempt for the opinion of the President, and questioned his authority. Governor Morris, the American representative in Paris, was instructed to ask for his recall which was immediately granted.

Mr. Speaker, in 1804, the Spanish Government asked for the recall of Charles Pinckney, the American Minister at Madrid. In a letter addressed to Cevallos, the Spanish Minister of State, he (Pinckney) threatened to inform American consuls of the critical state of the relations between the two countries, and direct them to notify American citizens to be ready to withdraw with their property. Our Government instructed Pinckney to come away on leave of absence.

Just see how unimportant this charge and yet he was recalled—

He was protecting American property in Spain and so he was requested to come home because his presence was distasteful to the Spanish Government.

In September 1804, the Marques de Casa Yrujo, Spanish Minister to the United States, proposed to the editor of an American newspaper to oppose certain measures and views of the Government, and advocate those of Spain. Our Government censored his action, as constituting a violation of an act of Congress known as the "Logan statute." He defended his conduct in a note, which he also caused to be published in the newspapers. On the ground of this attempt to tamper with the press, his recall was asked for, through the American Minister at Madrid. Yrujo had married a Pennsylvania lady and remained in the United States although he was substituted by a Chargé d'Affaires.

In October 1809 American Minister Pinkney at London was instructed to ask for the recall of Mr. F. J. Jackson, British Minister at Washington, because of an insinuating letter written by Jackson to the Secretary of State. Lord Wellesley, then Secretary of State for Foreign Affairs, maintained that Jackson did not appear to have committed any intentional offense against the United States Government, but he was recalled nevertheless.

Mr. BROWN of Kentucky. Will the gentleman yield?

Mr. BRITTEN. Yes.

Mr. BROWN of Kentucky. I read last week in a local paper where our Ambassador to Germany made a speech in which he disagreed in effect with their theory of Nazi government, and the paper stated that it was well received.

Mr. BRITTEN. I do not know to what the gentleman refers, but if our Ambassador to Germany made unpopular public statements contrary to the German Government as it now exists, he ought to be recalled.

Mr. BROWN of Kentucky. It was not exactly in that nature; he was addressing them on the conduct of government, and said that it was not his idea of government. Our Government raised no objection, neither has the German Government as far as anybody knows.

Mr. BRITTEN. The request for recall is usually by the country to which the Foreign Service officer is accredited.

Mr. TRUAX. Will the gentleman yield?

Mr. BRITTEN. Yes; for a question.

Mr. TRUAX. The gentleman read a statement that a group of students had been expelled from the university for refusing to take up military training.

Mr. BRITTEN. Yes.

Mr. TRUAX. Does the gentleman know how many students there are in the University of Ohio?

Mr. BRITTEN. No.

Mr. TRUAX. In the neighborhood of 14,000.

Mr. BLANTON. Will the gentleman yield?

Mr. BRITTEN. I wish the gentleman would allow me to proceed for a few moments.

Mr. BLANTON. I have to leave in a few moments to attend a conference on the War Department appropriation bill.

Mr. BRITTEN. I will yield to the gentleman.

Mr. BLANTON. The gentleman doubtless remembers some years ago the Interparliamentary Union met in this Chamber.

Mr. BRITTEN. Yes.

Mr. BLANTON. And there were congressional representatives from all countries here on the floor. I want to ask him if he and every other red-blooded American citizen who attended that Congress was not proud of the British representation on the floor?

Mr. BRITTEN. What has that to do with the subject matter before the House?

Mr. BLANTON. They are our friends. The English are not bad. Our Government has not objected to anything this man Kennedy or this Consul Campbell has said. Leave it to our Government. When our Government objects, let us then raise the question.

Mr. BRITTEN. Oh, I am a part of our Government, and I am objecting to it.

Mr. BLANTON. Oh, no; the gentleman is not a part of this present Democratic Government.

Mr. BRITTEN. The gentleman is mistaken.

Mr. BLANTON. This present Democratic Government is run by——

Mr. BRITTEN. Oh, I know who it is run by.

Mr. BLANTON. The head and leader of this present Democratic Government is in the White House.

Mr. BRITTEN. We all know who runs it. Most of our important legislation is prepared in a little red house in Georgetown. That is where the college boys and even their superiors meet every night to discuss legislation and then prepare it for us.

Mr. BLANTON. No; it is run by an outstanding American down here in the White House, who has a friendly dependable Democratic Congress that backs him up in all of his economic plans for recovery.

Mr. BRITTEN. Yes; he takes a great part in it, but all his legislation is prepared for him by others.

Mr. BLANTON. And he does not need any suggestions from the gentleman from Illinois.

Mr. BRITTEN. Let me proceed now with my precedents. I have no quarrel with Great Britain excepting that Great Britain is occupying a rather unusual position today when she announces to the world that she has a surplus of $200,000,000 this year; when she announces that she is reducing personal taxes in that country; when she announces that her reemployment is going ahead in great strides; when she announces increases in the salaries of employees in Great Britain, and at the same time refuses in the same breath to acknowledge her debt to us, and indicates that she will not include a dime in her budget to pay interest she owes us coming due in June. Then I say that I have a quarrel with Great Britain, just as I would have one with Germany or Belgium or Italy or any other country that has the face to become gleeful over their prosperity and then refuses to pay their honorable debts.

Mr. BLANTON. Oh, eventually, honest Great Britain will pay every cent she owes us, I predict.

Mr. BRITTEN. Will the gentleman endorse her notes?

Mr. BLANTON. I will underwrite the honor of Great Britain.

Mr. BRITTEN. Then, Mr. Speaker, I am sure that the British debt interest will be paid in June of this year even if it has to be paid by the gentleman from Texas himself.

Mr. TRUAX. Mr. Speaker, will the gentleman yield?

Mr. BRITTEN. Oh, let me get on with these precedents. I have only a few more.

Mr. BROWN of Kentucky. Cannot the gentleman find some Frenchman who will underwrite the French debt? [Laughter.]

Mr. TRUAX. What method does the gentleman suggest of collecting these war debts?

Mr. BRITTEN. I do not want to get into the question of the war debts.

Mr. TRUAX. But the gentleman has uttered criticism about it time and time again.

Mr. BRITTEN. I have on two occasions called upon the Secretary of the Treasury to go after France and England for an exchange of the papers which we hold. We now hold notes from Great Britain and France in billion-dollar denominations and under our funding agreement with France and England the Secretary of the Treasury may at any time call upon them for notes of smaller denominations which will compare with bonds outstanding against those nations which are on sale in every mart all over the world, and we could get these in $50, $100, $200, and $500 amounts, and with that paper, running into billions of dollars, we could back up our own finances the world over and be the strongest financial power on earth in every market in the world.

Mr. TRUAX. Has the gentleman offered such a measure in the House?

Mr. BRITTEN. No. It is not necessary to offer the measure. It is in the agreement between our Government and France and our Government and England, and all the Secretary of the Treasury has to do is to notify France that he takes advantage of that part of it and that he wants notes of the smaller denominations. The distinguished Secretary of the Treasury has never seen fit to answer my letter to him concerning this exchange of bonds, which was a personal letter—confidential—and which has never been given to the press. Now that the gentleman has more or less forced it out of me, Mr. Speaker, I will read the letter into the RECORD and I am sorry that it has become necessary to call to the attention of the House the discourtesy to which Secretary Morgenthau has treated my personal letter to him. I read:

PERSONAL

APRIL 2, 1934.

Hon. HENRY MORGENTHAU, Jr.,
Treasury Department, Washington, D.C.

MY DEAR SECRETARY MORGENTHAU: I am enclosing herewith two pages from the CONGRESSIONAL RECORD—the first, January 22, page 1106, at which time I publicly called upon the Secretary of the Treasury to take advantage of the provision in the war debt funding acts by calling upon our debtor nations for an exchange of bonds of small denominations for those we now hold in connection with their so-called "war debts."

On March 23, page 5284, I again called the attention of the administration, and particularly the Democratic Members of the House, to take advantage of this apparent opportunity to improve our financial position with defaulting nations.

Will you be good enough to advise me if your predecessor or you have ever communicated with the debtor nations along the lines suggested and if so, what the results were?

I know that this matter has already been called to the attention of President Roosevelt, though not because of anything which I may have said in the past.

I will be glad to hear from you at your convenience, and with kind personal wishes, my dear Secretary Morgenthau, I am

Yours very cordially,

FRED A. BRITTEN,
Member of Congress.

Mr. TRUAX. Did the gentleman make a similar request of Andrew W. Mellon when he was Secretary of the Treasury?

Mr. BRITTEN. I did not know that condition was in the treaty until I read it a short time ago.

Mr. TRUAX. The gentleman never knew it until this administration came into power?

Mr. BRITTEN. Not until a year after the present administration came into power.

Mr. McFADDEN. Mr. Speaker, will the gentleman yield?

Mr. BRITTEN. Yes.

Mr. McFADDEN. The gentleman is aware that I asked the House of Representatives to recall the British Ambassador a year ago, Sir Ronald Lindsay, because of his lobbying in connection with the reduction and nonpayment of the British debt.

Mr. BRITTEN. I did not recall that, but I am glad to have the information.

Mr. Speaker, in 1829 the United States Government had come to the conclusion that the prejudices entertained by a portion of the inhabitants of Mexico against our envoy, Mr. Poinsett, had greatly diminished his usefulness, and had decided to authorize his return home if it appeared to him expedient. But before instructions to this effect could be dispatched the Mexican Chargé d'Affaires presented a request for his recall, which was promptly granted, and a Chargé d'Affaires was appointed to Mexico in place of a minister.

Mr. Speaker, in 1846 Mr. Jewett, the United States Chargé d'Affaires at Lima, became involved in a dispute with the Peruvian Minister of Foreign Affairs, which in an exchange of letters was construed as a discourtesy to the Peruvian Foreign Minister, and Jewett's recall was requested. At that time the United States Secretary of State said:

If diplomatic agents render themselves so unacceptable as to produce a request for their recall from the government to which they are accredited, the instances must be rare indeed in which such a request ought not to be granted. To refuse it would be to defeat the very purpose for which they are sent abroad, that of cultivating friendly relations between independent nations. Perhaps no circumtances would justify a refusal unless the national honor were involved.

Jewett was recalled.

Mr. Speaker, in June 1871, Mr. Fish, the United States Secretary of State, instructed Mr. Curtin, American Minister at St. Petersburg, that the conduct of M. Catacazy, Russian Minister at Washington, both officially and personally, had for some time past been such as "materially to impair his usefulness to his own government and to render intercourse with him, for either business or social purposes, highly disagreeable"; that under these circumstances the President was of opinion that the interests of both countries would be promoted if the head of the Russian Legation were changed; after some little delay, this was done.

In February 1898, a translation of a private letter from Señor Enrique Dupuy de Lome, the Spanish Minister at Washington, to a Spanish journalist friend in Cuba, which had been abstracted from the mails at Habana, was published in a New York paper. The letter contained expressions concerning President McKinley which made it impossible for the Spanish Minister to remain longer in Washington. His recall was requested and accomplished.

While the recalling of a foreign diplomat is a very serious matter, it is not an unusual matter. When a Foreign Service officer goes out of his way to impede legislation, and particularly legislation of such high order, such high importance as our national defense, upon which the life of the Nation depends, I say that that man cannot reasonably stay in this country. His value to his own country is nil from now on; and his value to us, of course, is nil, because we do not want him here.

Mr. McFARLANE. Will the gentleman now yield? Has he not now completed his precedents?

Mr. BRITTEN. I yield to the gentleman from Texas.

Mr. McFARLANE. To whom did the gentleman refer in his statement about the little red house in Georgetown?

Mr. BRITTEN. I referred to the little red house down in Georgetown occupied by Mr. Cohen, Mr. Corcoran, and Mr. Guthrie. Almost every night in the week men like Ferdinand Pecora, Frederick C. Howe, James McCauley Landis, and a number of others—not necessarily of the highest importance, not Cabinet officers, but the men who wrote the Fletcher-Rayburn bill—meet there. The men who rewrote the Fletcher-Rayburn bill are there frequently; the men who rewrote it the third time are constantly meeting there in serious consultation over the affairs of state. All

important legislation is scrutinized and perfected to meet their radical ideals. The little red house in Georgetown is where are held the meetings which promote the communistic legislation we all talk about in the cloakrooms. It is the little red house in Georgetown where every night of the week from 10 to 18 young men of radical minds meet, so-called "young students"; they call them "Frankfurter's hot dogs."

Mr. TRUAX. Would the gentleman prefer the little green house on K Street that owned and robbed the country for 12 years?

Mr. BRITTEN. Mr. Speaker, the little red house in Georgetown is going to stand out like the little green house on K Street stood out some years ago under a Republican administration.

Mr. TRUAX. The color of that house was green?

Mr. BRITTEN. Yes; it was as famous under President Harding as the little Georgetown house is bound to be under President Roosevelt.

Mr. Speaker, every night of the week Prof. Felix Frankfurter's hot dogs [laughter] meet there in this little red house; and they shape not all legislation, not all of certain pieces of legislation, but they shape the elements in the legislation that we refer to as radical or communistic; and the little red house is going to be made one of the historic show places of Washington. The birthplace of legislation that has shocked two continents.

Hundreds of thousands of personal letters and telegrams from every section of the United States to Members of the House and Senate protesting against the un-American provisions in the Fletcher-Rayburn bills for the control and regulation of securities exchanges has caused another complete breakdown in the Roosevelt administration forces, and these bills have been rewritten for the third time in order to appease the popular demand for Federal regulation of the stock exchanges without Federal control and strangulation of every industry in the United States whose securities may be on public sale.

Millions of investment-security holders in the United States expect the Government to enact further legislation for protective regulation and control of the stock exchanges under some form of commission which will understand the complicated intricacies and the inner workings of the stock markets and not by a political commission whose members have little or no first-hand knowledge concerning securities exchanges.

I hope that the administration forces will now agree upon a regulatory commission composed of representatives of the Federal Reserve System, the Department of Commerce, the Treasury Department, the Federal Trade Commission, the Interstate Commerce Commission, the Chicago Board of Trade and the New York Stock Exchange, with headquarters in Washington.

The bills now pending would authorize the Federal Government to regulate and control practically every large industry in the country, notwithstanding the direction of the Constitution of the United States to the contrary. As now drawn, they come very close to the Russian system of nationalizing all industry. It is but a short step to bolshevism.

Mr. Speaker, under the guise of stock-exchange regulation, the Federal Government could strangle any business with which it was not in complete sympathy, politically or otherwise. The Federal Trade Commission would become the most important department of the Government, and the daily value of the securities of practically every corporation in the United States would depend upon the whim of this Federal oligarchy.

The hundreds of thousands of letters and newspaper editorials which have deluged Members of Congress during the past 30 days have been the most constructive criticism of any legislation during my 22 years in Washington, and that is the reason for their success. Unless the Rayburn committee reports a reasonable bill to the House, it will be amended on the floor so as to meet the demand for legislation that will regulate the stock exchange and not destroy it completely.

In the Republican cloakroom of the House it is freely admitted that the Fletcher-Rayburn bills were written by Ferdinand Pecora; James McCauley Landis, Federal Trade Commissioner; Benjamin Victor Cohen, P.W.A.; and Thomas Corcoran, R.F.C.; all disciples of the Felix Frankfurter school of radical thought.

Mr. HENNEY. Is not the gentleman fearful that he is stealing Dr. Wirt's thunder?

Mr. BRITTEN. The name "Wirt" is pretty nearly like Wurtzberger. Wurtzberger and Frankfurter may go well together. We shall see.

[Here the gavel fell.]

ELECTION CONTEST, GORMLEY *v.* GOSS

Mr. GAVAGAN. Mr. Speaker, by direction of the Committee on Elections No. 2, I call up a privileged resolution in the contested election case of *Gormley* v. *Goss*.

The Clerk read as follows:

House Resolution 346

Resolved, That Edward W. Goss was elected a Representative in the Seventy-third Congress from the Fifth Congressional District in the State of Connecticut and is entitled to a seat as such Representative.

Mr. GAVAGAN. Mr. Speaker, unless Members on the other side want a discussion of this case, I have no desire to use any time.

Mr. SNELL. Move the adoption of the resolution.

Mr. GAVAGAN. Mr. Speaker, I move the adoption of the resolution.

The resolution was adopted.

A motion to reconsider was laid on the table.

ORDER OF BUSINESS

Mr. PATMAN. Mr. Speaker, I ask unanimous consent to address the House for 20 minutes.

Mr. SNELL. Mr. Speaker, reserving the right to object, and I shall not object, I wish to ask the gentleman from Tennessee whether there will be other business transacted this afternoon except speeches of gentlemen who desire to address the House?

Mr. BYRNS. There will be no further business to come before the House except requests to address the House. Inasmuch as we are in session we thought it would be a good thing to let those who wish to speak address the House for at least a reasonable time.

Mr. JENKINS of Ohio. Mr. Speaker, will the gentleman yield?

Mr. BYRNS. I yield.

Mr. JENKINS of Ohio. Has any program been determined upon for tomorrow or Monday?

Mr. BYRNS. There is nothing to come before the House tomorrow, that I know of. Monday will be District Day. Tuesday morning it is expected to take up the nationality bill, with which the gentleman is familiar.

Mr. JENKINS of Ohio. A while ago the gentleman from Tennessee secured permission for the gentleman from New York [Mr. SIROVICH] to address the House for an hour on Tuesday. The Dickstein bill was to have been brought up today, but for apparently good reason it was not brought up. For fear that it might come up sometime when my duties may call me from this Hall I wish to state that heretofore I have been one of the chief opponents of that bill. On several different occasions I have objected to and have made speeches with reference to the principle involved in this bill, and I have predicated my opposition upon the fact that the Secretary of State's office and the Secretary of Labor's office were opposed to the bill. I understand that they have receded from their position and that they are not in opposition to the bill at this time. I never had any personal opposition to it, but I felt that so long as the Department of State and the Department of Labor were opposed to it because of complications that might arise from its administration we should be slow to load these Departments with this unwelcome work. May the RECORD show that even if I am not here I, too, have withdrawn my opposition to it because of their withdrawal. So far as I am able to see I do not see any serious menace in this bill from the standpoint of letting in any additional immigration.

I have always opposed letting down the bars. If the Departments of State and Labor wish to have this bill enacted the responsibility is theirs.

Mr. SABATH. The gentleman is ready to follow the Democratic Secretary of State.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

There was no objection.

ANNUAL MEMORIAL SERVICES

Mr. CROWTHER. Will the gentleman yield?

Mr. BYRNS. I yield to the gentleman from New York.

Mr. CROWTHER. Mr. Speaker, the annual memorial services for deceased Members will be held on the 27th. I ask unanimous consent that such Members of the House as desire to contribute eulogies to the annual memorial book following the services may be allowed to extend their remarks without further application on their part. When the eulogies are ready may I request the Members of the individual States who have lost Members during the last year to see that the eulogies are handed to the official reporters in order that they may be promptly put in the book following the close of the services.

The SPEAKER. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. BYRNS. Mr. Speaker, may I say a word for the information of the gentleman from New York [Mr. SNELL]. I stated a moment ago that there was no other business to be transacted this afternoon. The gentleman from New York [Mr. GAVAGAN], who is chairman of the Elections Committee, informs me he is waiting for a report in the Chapman-Burnham case, and if that comes over he should like to call up the report. Further than that I know of no business that may come before the House.

LOSSES OF BANK DEPOSITORS

Mr. PATMAN. Mr. Speaker, I asked for this time in order to discuss three proposals. One is the income-tax-publicity feature of the revenue bill. The other is the McLeod bill, and the third is the bill pending before the Banking and Currency Committee providing that after June 30 deposits in all banks will be insured up to $2,500 only and not for the full insurance provision, as now embodied in the law, which will be effective on June 30 if the law is not changed.

LITTLE RED HOUSE IN GEORGETOWN

First, I desire to refer briefly to what the gentleman from Illinois [Mr. BRITTEN] has just stated. He referred to a little red house over in Georgetown. His story sounds very much like another Dr. Wirt story. Just about as much to it. I presume that the gentleman was reminded of a little red house in Georgetown by his knowledge of what happened in a little green house on K Street during previous Republican administrations. It has been said, it is true, that this administration is tending toward helping the people too much, just the masses of the people, just the plain folks. The administration is even being accused of taking advice from people who are inclined toward socialism. Personally I much prefer that accusation being brought against the administration than having the charge made, as has been made during the 12 years preceding the present administration, that Wall Street and international bankers were absolutely controlling the administrations in power. That was a fact and was proven true in many instances. We all knew of the situation. Their activities were partly directed by a little group in the little green house on K Street. I do not know how many red houses may be found in Georgetown, but I do not believe they will find a clique, clan, or organization that is dictating the policies of the present President of the United States. Disclaiming the right to speak for the President, as I do not have the right to speak for him, I can give you my views.

NO "BRAIN TRUST" CONTROLLING PRESIDENT

There is no "brain trust" controlling the President of the United States. It is true that he seeks the advice and counsel of well-informed men in this Nation, which he should do, and after he gets their advice and counsel and the benefit of the information they have, he makes up his own mind. He goes against some of them every time he makes a decision. There is no "brain trust" that I know anything about, or that anyone else coming in contact with the administration has told me anything about, and which is controlling and dictating the policies of the present President of the United States. One thing is sure, no President has done more for the poor, the wage earners, the low-salaried people, and the farmers. He has upon more than one occasion taken the side of the plain people and hit Wall Street and international bankers squarely between the eyes. His policies have saved the homes of millions of people; refinanced, scaled down, and reduced the interest rates on home and farm mortgages; have given jobs to millions, fed and clothed the destitute, helpless, and unfortunate. He continues to go straight down the middle of the road for the people. He has reestablished and is putting into effect the old slogan of "equal rights to all and special privileges to none." No other President has made a greater effort to carry out the intention of the framers of the Constitution than President Roosevelt. Our President's policies are in the interest of the people who produce the Nation's wealth, and I am glad he is not following the advice of the gang that has robbed and plundered this country.

Mr. OLIVER of New York. Will the gentleman yield?

"BRAIN TRUST" BETTER THAN "BRAINLESS TRUST"

Mr. PATMAN. I yield to the gentleman from New York.

Mr. OLIVER of New York. Is it not a fact that whatever "brain trust" there is at the present time succeeds the "brainless trust" existing previously?

Mr. PATMAN. That is very true. Whatever "brain trust" the President has, as the gentleman suggests, succeeds the "brainless trust" heretofore existing.

Mr. SABATH. Will the gentleman yield?

Mr. PATMAN. I yield to the gentleman from Illinois.

ADVICE OF HONEST REPUBLICANS WILL BE CONSIDERED

Mr. SABATH. Is it not a fact that the President is willing to take advice from any and every honest Republican whenever he can find one if they have the interests of the people at heart?

Mr. PATMAN. I am sure that is true. I have no right to speak for the President, but if he can find a Republican, as the gentleman says, who is honest and has the interests of the people at heart, I am sure the President of the United States will be very glad indeed to listen to him.

Mr. ALLEN. Will the gentleman yield?

Mr. PATMAN. I yield to the gentleman from Illinois.

Mr. ALLEN. Does not the gentleman believe that the people would feel better if he would take the advice of such men as Owen D. Young, Carter Glass, Newton Baker, Charles M. Schwab, and men of that caliber?

Mr. PATMAN. I did not yield to the gentleman for a speech.

Mr. ALLEN. I am asking the gentleman a question.

Mr. PATMAN. I think he has a right to select his own advisers and to take such advice as he desires to take and to exclude that which he does not desire to take. I understand that is what he does.

Mr. ALLEN. Does not the gentleman feel that the people of the country as a whole would feel better if he would take advice from men of that type?

Mr. PATMAN. The people as a whole will be pleased with what the President does. It was just such policies as some of those men advocate that caused us to be in the condition we are in today.

Mr. ALLEN. Advice of men like Carter Glass and Owen D. Young.

Mr. PATMAN. I am not going to get into personalities, but I do not agree with the policies of all of the men that the gentleman has named; however, I am not going to get into personalities.

The people are now getting an honest deal along with the new deal. The little red house story is all imagination; it has been created in the fertile mind of the gentleman from Illinois [Mr. BRITTEN]. He and others who desire to destroy a President who does not agree with them politically are

compelled to seek something else to talk about, since their Wirt bubble has blown up.

Mr. BLANTON. The gentleman from Illinois would want to include, I am sure, Andrew W. Mellon in his list.

MELLON'S FLIGHT TO ENGLAND

Mr. PATMAN. Yes. It was due to policies of such men as Andrew W. Mellon that caused the people of this country, the farmers and wage earners to be crushed. If Mellon had not fled under fire to England in order to get away from this country when his unlawful activities and criminal acts were being exposed, much crookedness and corruption would have been exposed a long time before it was. The Republican Party shielded and protected him. The leaders of that party assisted in getting him out of the country between suns. They denied me the right to turn on more light in the impeachment trial.

Mr. ALLEN. Does not the gentleman feel the fact that those men are college professors sort of disqualifies them from offering suggestions?

Mr. PATMAN. I do not think that enters into the matter. I know some mighty good college professors.

Mr. ALLEN. If they had taught school for a few months, that would qualify them.

Mr. PATMAN. I do not think the question of their being college professors or not enters into the suitation, except insofar as it may qualify them for the positions they hold. If I were compelled to take the advice of college professors or bankers, including Mellon, Morgan, Mills, Myers, Wiggin, and others, I should prefer the professors'. They are not accused of trying to promote their own interests. We know the other group that had charge of the country prior to 1933 did promote their own interest to the detriment of the general welfare. No one accuses the professors of being selfish or greedy, and I think the President has gotten much better advice and information from them than he would have gotten from those representing the school of thought that brought this country to the brink of ruin and revolution. The principal objection that is being urged against President Roosevelt is that he has taken the Government out of the control of a few greedy bankers. I do not consider his action in this regard objectionable but highly commendable. As between unselfish professors and greedy bankers I am 100 percent for the professors.

M'LEOD BILL

Now, with reference to the banking situation and the McLeod bill in particular, there is some agitation in this country, a great deal of agitation, for our Nation's credit to be used in a more helpful way for the benefit of all the people. This can be done. A few of the larger banks of the country have used the credit of this Nation to very great advantage.

BANK PAYING 200-PERCENT DIVIDEND ANNUALLY

I do not know whether the gentleman is from Pittsburgh, Pa., or not, but there is a bank in Pittsburgh that is owned by Mr. Mellon that has been paying 200-percent dividends a year for many, many years, and in addition to this paying the president of the institution $175,000 a year on a capitalization of $1,500,000. Why? Because they were able to use the credit of this Nation free.

BLANKET MORTGAGE

Now, what is the credit of this Nation? Every bill—currency—that is issued represents a blanket mortgage upon all the property of all the people of this country and upon all the incomes of all the people of this country, and the people who are privileged to use this great credit and use it free of charge, not paying anything for it, have a great advantage over the other people.

The people of this country are beginning to find this out, and they object to it. They want some kind of change made, hence all these different proposals that are made for all the people to use a part of the Nation's credit.

IDIOTIC MONEY SYSTEM

Another thing that brings this about is that bonds are issued, tax-exempt, interest-bearing bonds, by our Government and sold to certain banking institutions. Sixty percent of these bonds that are issued by the Government, I understand, are owned by the banks now. These bonds are issued and sold to the banks, the banks merely giving credit on their books for the bonds. They turn right around and put the same bonds up with the same Government that sold the bonds to them and get new money issued in return for these bonds, using these bonds as collateral security for the issuance of money, and at the same time they use this money they get interest on the bonds that are deposited; in other words, money issued on the Government debts. What the people cannot understand is why not issue the money direct and leave out the tax-exempt, interest-bearing bonds. They cannot understand why we must give certain bankers a bonus or subsidy for the use of our own Government's credit.

Mr. GLOVER. Will the gentleman yield?

Mr. PATMAN. I yield.

Mr. GLOVER. I noticed in the statement yesterday that I received from the Treasury Department, where the Treasury and the Reserve banks have seven and a half billion dollars or more of gold in the Treasury. With the 40-percent gold reserve we have had all the time under the gold standard we could issue now something like $10,000,000,000 in money. Would not the gentleman think that instead of selling interest-bearing bonds, the proper thing to do would be to issue the currency and meet the demands of the Nation without selling bonds?

FIFTEEN BILLION DOLLARS COULD BE ISSUED NOW ON GOLD SUPPLY

Mr. PATMAN. Since the revaluation of the gold dollar we have sufficient gold in the Treasury that belongs to the Federal Reserve bank and to the Treasury, jointly, that can be used as a 40-percent gold base for the issuance of an additional $15,000,000,000 at this time. This should satisfy the most reactionary gold advocates and most reactionary advocates of a metallic base for the issuance of money. This will not satisfy the gold advocates. It is not gold they are so much interested in; it is keeping the amount of money down to the minimum. With little money and much credit they can control the monetary situation. They cannot control if too much money is used to take the place of credit.

So the point is, Why should we pay interest on bonds to get money when we have a sufficient base to issue that money?

VOLUME AND VELOCITY OF MONEY

In this country in the last 2 or 3 years, or since 1929, there has been a deflation. Remember, our circulating medium is not only just money of about $5,000,000,000 or $5,500,000,000, but it is represented by what some prefer to call deposit currency, which is deposits in banks of the country, which are used daily by the issuance of checks. They enter into our circulating medium and serve the same function as money, and about 90 percent of our business formerly was done through the use of checks. Therefore, if you will take the figures for 1929 and add up the amount of deposits in banks that is used as currency and then you add to that the actual money in circulation, you will find that we had about $60,000,000,000, and that this $60,000,000,000 was turning over 22 times a year, and representing business transactions aggregating $1,300,000,000,000 a year. You can ascertain for yourself how much business it was doing. Every dollar was doing $22 worth of business a year. Now we have almost $20,000,000,000 less than that and it is turning over only 11 times a year, and doing less than $500,000,000,000 of business. Therefore, there has been a deflation in the actual use of money now as compared to 1929, of more than $800,000,000,000. It is not just the volume of money, it is the velocity as well, and you must have some way of getting this money and credit to turning over.

BILLION-DOLLAR FRANCHISE

We must make up for this great deflation in some way, the banks are not letting the people have money. Industry wants to borrow money, but it cannot borrow the money. Somehow or other they do not have the security to offer that the banks will accept, and as pointed out by my good friend, JEFF BUSBY, of Mississippi, many times, the banks of

this country are not even under an obligation to furnish the people a sufficient circulating medium. They are not obligated to do this, although they have been given this great privilege, the greatest privilege on earth, a franchise that is worth billions and billions of dollars, but when we gave them this privilege we did not even obligate them to furnish this country sufficient circulating medium.

It has been farmed out to private individuals, this great privilege, which under the Constitution belongs to Congress. We turn it over to private corporations for their own benefit without any obligation to furnish the people with a circulation medium.

Mr. KENNEY. Will the gentleman yield?

Mr. PATMAN. I yield.

GOVERNMENT SHOULD TAKE OVER FEDERAL RESERVE

Mr. KENNEY. Does not the gentleman think in this period of deflation that we might extend that privilege to the Federal Reserve by setting up a new agency of the Government an institution that might take over the bonds?

Mr. PATMAN. Yes; but I think the Government should take over the Federal Reserve first. There is no reason why the Federal Reserve banks, which are owned by private corporations, should be allowed to have the privilege of issuing currency in this Nation free of charge.

Mr. KENNEY. I wanted to ask the gentleman if it is necessary to do that?

Mr. PATMAN. I think the Government should take over the Federal Reserve, which is being used by private corporations.

DEPOSITORS' BILL

Now, when I first saw the McLeod bill and heard that it was an expansion measure, I thought I would give it a good deal of consideration. But I am not willing to endorse a bill simply because I believe it is an expansion measure. The McLeod bill is based on the assumption that the monetary system was wrong, and because it was wrong, wrong instructions were given to the bank examiners, and they gave these instructions to the officials of the banks, and those banks by reason of these instructions had to close their doors and the depositors lost money. Therefore the Government monetary policy is wrong, and we should make good those losses.

WHY STOP AT 1930; WHY NOT 1920?

If it could be shown that by reason of the negligence of an official of this Government a depositor lost his money, I would be willing to pay; but just to pay them on the general theory that the policies that were in effect at that time were wrong is going rather far; in fact, too far. Further, why say that you will pay depositors back to 1930? There is no argument for that that would not equally apply to depositors back in 1920.

WRONG MONETARY POLICY COMMENCED IN 1920

This wrong monetary policy commenced in 1920, when the other body passed a resolution calling upon the Federal Reserve Board to deflate the currency. The Federal Reserve Board ordered deflation policies to go into effect, and caused the price of cotton to go down from 40 cents a pound in May 1920, when the resolution was passed, to 7 cents, 4 months later, and wheat to go down from more than $3 a bushel to $1.40. Why should we not go back to the time this deflation started, that has caused all these banks to break? Why go back only to 1930?

CAN ANYONE BE FOUND WHO RELIED UPON WHAT MR. HOOVER SAID?

Some of our friends suggest that Mr. Hoover made some speeches and in those speeches he asked the people to bring their money back to the banks and not to hoard their funds, but to put their funds in the banks and let the money go again into channels of trade and production. They say that the people heeded that call and put their money back into the banks, and that the banks were closed and that they lost their money. It is possibly true that in some rare instances people did put their money back into the banks, but my best recollection is that when Mr. Hoover made those speeches they drew the money out rather than put the money back in. I do not think that you will find where the deposits increased by reason of any speeches made by Mr. Hoover against the hoarding of money.

In other words, the money went the other way. You will find where the postal-savings deposits increased, and increased tremendously, along about that time, but the deposits in banks did not increase by reason of any speeches made by Mr. Hoover; and if anybody should come to the American Congress and say that they listened to Mr. Hoover's speech and believed what he said was true, and, acting and relying upon that promise and believing it was true and that they intended to help the country they put their money back into the banks and lost it for that reason, then I would be willing to pay them; but I do not think you will find many like that.

Mr. PIERCE. Mr. Speaker, will the gentleman yield?

Mr. PATMAN. Yes.

COST OF M'LEOD BILL

Mr. PIERCE. What will the McLeod bill cost us?

Mr. PATMAN. I do not know what it will cost. I would not object to the cost if the principle were good. I should like to see two or three billion dollars or more than that put out in actual money. If it should cost even $5,000,000,000, and the principle were good, I would be for it. but it is not sustained by logic and reason. You cannot say that you are going to pay depositors of national banks because the monetary policy of our country is wrong, and not pay the depositors of State banks and of private banks, of Federal land banks, of building-and-loan associations, and joint-stock land banks, or the stockholders of the closed banks. If the Government is liable to the depositors, is it not also liable to the stockholders of the banking institutions?

The SPEAKER pro tempore (Mr. BEAM). The time of the gentleman from Texas has expired.

Mr. BANKHED. Mr. Speaker, I ask unanimous consent that the gentleman's time be extended for 15 minutes.

The SPEAKER pro tempore. Is there objection?

Mr. WEIDEMAN. Mr. Speaker, I reserve the right to object. I should like to have 10 minutes after that.

Mr. BUSBY. Mr. Speaker, I want to obtain a little time, although I do not want to interfere with these valuable discussions.

Mr. WEIDEMAN. I should like to ask unanimous consent for 15 minutes.

The SPEAKER pro tempore. The question is, Is there objection to the request of the gentleman from Alabama that the time of the gentleman from Texas be extended for 15 minutes?

There was no objection.

CAN GOVERNMENT PAY ALL LOSSES

Mr. PATMAN. Mr. Speaker, the joint-stock land banks have been under Government supervision and the Federal land banks have been under Government supervision; and if you are going to pay everybody who lost money by reason of some concern that was under governmental supervision, directly or indirectly, it will soon lead you to pay for all of the losses of the American people—and who is going to do it? Mr. Insull will probably be happy to know that the Government is considering the adoption of such a policy. If you are going to pay all those concerns that I have mentioned, then it will be said that the monetary policy caused the stock-exchange collapse in 1929, and their theory will be supported by as much logic and reason; and if the monetary policy of this Government caused the banks to close down on the people who were borrowing money from them, and the brokers' loans went from billions and billions of dollars down to just a very small sum in a short time and caused the collapse of the stock market, do not you think that one who owns stock could say that the Government's monetary policy caused this and, therefore, the Government should pay him his losses? They would have the same reason to support their contention as you have in the McLeod bill.

Mr. HEALEY. Mr. Speaker, will the gentleman yield?

Mr. PATMAN. Yes.

Mr. HEALEY. The gentleman does not mean to put the depositors in banks in the same category as these persons who speculated in the stock market?

DID HOOVER'S SPEECHES CAUSE DEPOSITORS TO LEAVE MONEY IN BANKS

Mr. PATMAN. No, I do not, but I am talking about the principle. The depositors in banks, they claim, could have gotten their money out, and when Mr. Hoover made these speeches, although they did not bring any money back, yet some of them would have taken their money out if Mr. Hoover had not made those speeches. Let us analyze that statement. Let us see how much truth there is in that and how much reason there is to support it. In this country when Mr. Hoover made those speeches we had more than $45,000,000,000 in deposits in the banks of the Nation. Suppose those depositors had wanted their money and had gone to their respective banks and called on the bankers for that money, could they have gotten it? No; they could not. The banks would have been closed instantly. The banks had only $700,000,000 in the vaults of all of the banks of the country with which to pay that $45,000,000,000. They had less than $2 for every $100 that the banks owed the depositors of this country, so how can they claim, with any logic and reason to support their arguments, they would have drawn their money out had they not been led to believe by Mr. Hoover that it was against their interest and the country's interest to do so?

In other words, they could not have done something that was absolutely impossible for them to do under any circumstances. The banks did not have the money to pay the depositors, therefore they could not have drawn their deposit money out of the banks.

Mr. LEE of Missouri. Mr. Speaker, will the gentleman yield?

Mr. PATMAN. I yield.

Mr. LEE of Missouri. If we proceed to pay off these people who lost their money in the banks, the next thing will be to pay off the people who bought Cities Service to the extent of $1,100,000,000, to pay off the people who bought Insull stock; and the Government never would get through paying off these people who have been defrauded and robbed during 12 years of the Republican regime.

BAD PRECEDENT

Mr. PATMAN. The same theory and the same principle that supports that argument will support the liquidation by the Government of practically all the debts which are owed by the American people; and who is going to do it? I should like to see these people get their money; I should like to see these banks open. We need banks, they are very necessary and highly essential institutions. I should like to see their doors open again; but if you are going to distribute money because people need money, there is a better way of doing it than by paying off the depositors of the banks.

Mr. PARSONS. Mr. Speaker, will the gentleman yield?

Mr. PATMAN. I yield.

Mr. PARSONS. Would not a good way to open these banks be to have the Government take their preferred stock as is being done by the Reconstruction Finance Corporation, and open these institutions, having the depositors waive a certain percentage of their deposits, making the balance available to them?

FAVOR HELPING THE BANKS OPEN

Mr. PATMAN. It would be well to do this: Let the Government appraise the assets of every closed bank and be liberal and generous in the appraisals. Then let the Government take over those assets dollar for dollar and put up that money for preferred stock or new capital in order to reopen the banking institutions. Then do not let the depositors come there and collect 100 cents on the dollar, 25 cents on the dollar, or any other amount on the dollar, except when the bank can safely pay the depositors but let that bank continue to function and collect its obligations, and as it does that to pay off their depositors. To handle the situation in this way would be doing the depositors a favor and would not result in any great loss to the Government of the United States.

Mr. PIERCE. Mr. Speaker, will the gentleman yield?

Mr. PATMAN. I yield.

Mr. PIERCE. Practically that very thing is being done today in the West—in Oregon at least.

Mr. PATMAN. The Reconstruction Finance Corporation has a right to do that.

Mr. PIERCE. That has been done in hundreds of cases.

UNLIMITED APPROPRIATION TO UNKNOWN SOURCE

Mr. PATMAN. The gentleman realizes that we should not issue blanket authority to take one or more billions of dollars from the country's Treasury to pay off depositors in closed banks.

In the past when we have had under consideration an appropriation bill for public works, it has always been the custom to allot the money so we would know exactly how it was going to be spent. That is one of the best ways on earth to expend public funds. It would be a very unreasonable thing for us to authorize the issuance of $2,000,000,000 or $3,000,000,000 just to pay the depositors in closed banks.

What are you going to say to your constituents when they ask you what banks the money went to? All you can say is: "I do not know; we are just paying them off." Some banks' assets are worth 90 cents on the dollar; some banks' assets are worth 5 cents on the dollar; some banks' assets are absolutely worthless where the officials of the bank had stolen the money, confessed, and been sent to the penitentiary for their crime. Under this plan we would be paying them off and when they got out of the penitentiary they would even get their own deposits paid by the Government of the United States. There is no logic or reason to support any such argument as that. There is no logic to back up the argument that is made that the Government of the United States should stand those losses back to 1930. We should reappraise those assets and further help them out as the R.F.C. is doing. The McLeod bill would cause more tax-exempt, interest-bearing bonds to be issued to pay these losses.

FARMERS LOST $20,000,000,000 BY DEFLATION

If you insist on paying losses now, do not stop at 1930; go back to 1920, when this thing started. We have lost 10,000 banks since 1920. It is not right to pay them off for the period back in 1930; go back and pay them off back to 1929, 1928, 1925, 1922, or 1921; go back to the time this thing started; in 1920.

And remember that the farmers came in for a loss. The value of their property prior to this deflation was $77,000,000,000. Immediately after the deflation it was only $57,000,000,000. The farmers have lost their lands; the farmers have lost their homes; and if you are going to pay losses, do not forget to pay them, because the monetary policy which caused losses to the banks is the policy which caused losses to the farmers.

Do not forget the cotton farmer who had on hand cotton worth 40 cents a pound, which, by reason of this monetary policy which caused losses to depositors in banks, depreciated in value to 5 cents a pound. Other producers will have similar claims.

Mr. CARPENTER of Kansas. Mr. Speaker, will the gentleman yield?

Mr. PATMAN. I yield.

Mr. CARPENTER of Kansas. Why stop at 1920? Why not go back to 1900, to 1890, to 1885? Once you start this policy of paying losses is there any logical place to stop?

Mr. PATMAN. You will find that from 1913, from the time President Wilson came in until he went out, there were very few banks closed.

You will find for the 10 years after that that more than 10,000 banking institutions in this country closed.

Mr. CARPENTER of Kansas. Banks closed in 1890 and 1885. We have claims of various kinds coming here all the time from away back there.

Mr. PATMAN. The gentleman may contend that we should should go back to 1800 or 1789. If the McLeod bill passes it will be a precedent for bills aggregating inconceivable amounts to pay losses.

INSURANCE CLAIMS

Mr. BLANTON. Why not pay all the insurance debt claims which in the last 10 years people have been forced to settle for as low as 5 cents on the dollar if we are going to start in to pay losses? Many of them have been settled on that basis. Our people have lost millions and millions of dollars on claims settled on that basis.

Mr. PATMAN. They claim it is this monetary policy that caused that condition to arise. They claim that their banking institutions went broke, which broke them, therefore they are broke and cannot pay the people who have claims against the insurance companies. So if you are going to pay the depositors, why not pay the policyholders that have just as good claims? Whenever you pay people on a broad principle through just a blanket appropriation bill, just to pay somebody, it is not very good judgment, as I view the matter. You should know where the money is going, to whom and why, before paying out funds of the United States Government.

The claim is made that by reason of the contraction and deflation of credit and currency, banks were destroyed and the banks being destroyed, the investors were destroyed. If you pay one, pay all of them.

WILL TAKE $200,000,000,000 TO PAY ALL LOSSES

Mr. ARNOLD. Applying the principles of the McLeod bill in other lines, has the gentleman any idea, or can he give us any information as to the probable amount of money it would take in order to pay off all of these losses that have been suffered?

Mr. PATMAN. I would estimate roughly a couple of hundred billion dollars. That is a rough estimate. That includes all the farmers' losses, the losses on the stock exchange, and the national banks, State banks, private banks, building-and-loan companies, Federal land banks, joint-stock land banks, and all other losses of the people. I presume the aggregate would be at least $200,000,000,000. The national wealth, of course, is not as large as it used to be.

Mr. HASTINGS. What argument is advanced in support of the date, January 1, 1931, as indicated in the bill?

Mr. PATMAN. I do not know. If anyone knows why that date is in there, I wish they would tell us. Mr. McLEOD, the author of the bill, is here, and I will yield to the gentleman to tell us why the date, January 1, 1931, was put in there.

Mr. McLEOD. I did not put the date in there.

Mr. PATMAN. What date is the gentleman in favor of?

Mr. McLEOD. My theory is all banks in receivership today.

Mr. PATMAN. What about the closed banks that are not in receivership? Why discriminate against them? They have the same kind of claims. They lost their money in the same way by reason of the same kind of policy's being put into effect by our Government.

Mr. McLEOD. I am just answering the gentleman's question. I thought the question was what did we provide? I said we provided for banks in receivership today. I understand there will be amendments offered suggesting a date.

Mr. PATMAN. There is one thing you cannot escape. If we are going to pay these losses on the theory claimed here, we cannot start in 1930. We will have to go back at least to 1920. We would be discriminating against depositors in other banks if we did not do that. We could not confine it just to national banks. We would have to include all these other financial institutions. I am informed that many of them were under the same kind of governmental supervision that the national banks were. Of course, when you do that you might just as well not consider the matter further.

Mr. DONDERO. Will the gentleman yield?

Mr. PATMAN. I yield to the gentleman from Michigan.

Mr. DONDERO. The gentleman always wants to be fair. The McLeod bill only applies to national banks now in active receivership. I understand that under the figures that have been given only about $1,800,000,000 would be required.

Mr. PATMAN. I do not object to the $1,800,000,000. I should like to put twice that much money in circulation in the country, but I am not going to ask to put it out on any such theory as that, and I am not in favor of issuing tax-exempt interest-bearing bonds in order to get the money. If you want to distribute money, there are better ways of distributing it than paying it to these depositors.

THE M'LEOD BILL

Mr. SCHULTE. Mr. Speaker, I ask unanimous consent to extend my remarks in the RECORD.

The SPEAKER. Is there objection?

There was no objection.

Mr. SCHULTE. Mr. Speaker, relative to the McLeod bill, I was one of the Members who signed the petition to bring the McLeod measure out on the floor and to discharge the committee. The reason for my doing so was that I felt a great many people would be benefited by this particular piece of legislation.

However, upon going into the McLeod bill and analyzing it throughout, I find it takes care of only those who were fortunate enough to deposit their money in national banks or banks of the Federal Reserve System and it does not take care of those institutions which were State controlled or privately owned.

Since the McLeod bill was introduced another measure has been designed and introduced by Representative BROWN of Michigan. This bill is known as the "Brown pay-off bill." Each measure is of tremendous interest to my people and myself; however, I am more interested in the Brown bill because of its more far-reaching scope to include all banks. Without the least bit of reflection on the worthy purpose of the McLeod measure, I feel that from the standpoint of service to the people the Brown bill is the most honest, and fairest and most equitable measure introduced thus far; a bill which should receive the support of every Member of this Congress.

I am for the Brown bill because it is designed to give relief to depositors of State and private banks and trust companies; whereas, the McLeod bill points only to national and Federal Reserve banks. In my district there were five State banks to every national or Federal Reserve institution. It is obvious, therefore, that to give relief to the majority of the people, depositors of State banks and trust companies must be included.

I do not represent a rich district; my people know the penalty of toil; they know the drudgery of long hours and small pay, and they know what it is to sacrifice in order to save for a rainy day. People of the great Calumet district are thrifty and all indications of their thrift could be seen in the millions upon millions of dollars that were put into saving deposits in the fifty-odd banking institutions prior to the depression.

But one day the depression struck and the people of my district felt, among the first, the full force of the depression; banks crashed on all sides, and men and women, old and young, found themselves penniless. They were not to blame, but were the innocent victims of laxity in government. That created a state, I am sorry to say, which has been endured by my people and your people for the last 4 years. Nothing has been done about this until this Congress, under the great leadership of our admirable President, has shown the way.

While I signed the petition asking for a vote on the McLeod measure, I sincerely feel the Brown bill is a measure designed for all the people of this Nation. And I can assure you that my people back home feel the same way as is attested by the hundreds of letters which I have received regarding it.

Supporters of the McLeod measure have advanced the theory the Government is responsible for losses by depositors. I feel that this theory is wrong. The directors and stockholders alone are responsible. There can be no question about it.

I do not think the McLeod bill goes far enough, because it only provides for a pay-off of depositors of Federal Reserve banks. It does not give any consideration to the thousands

of depositors of State banks and trust companies and private institutions which abounded in my district and every district in the United States. The McLeod bill would pay off the big depositors who had large deposits in Federal Reserve banks and would completely ignore the little fellow—the depositor who today is feeling the pangs of starvation and want and cannot buy the necessities of life or the medicine for his baby because his savings are tied up in banks whose doors may be locked forever.

On the other hand, the Brown bill provides that all deposits up to $2,500 be paid in full in cash. It also provides the banks may borrow up to 85 percent of the present value of the remaining assets from the R.F.C. and pay it to the remaining depositors. Because the Brown bill comes within the liberal, progressive policy of the Roosevelt administration, I feel that we can support it whole-heartedly and unqualifiedly, as it is a bill which will render the maximum amount of relief to the greatest number of people everywhere who were prudent enough to trust banks but who are now suffering misery and misfortune everywhere.

Also, the Brown measure will cost only about one third to one half as much to administer as will the other bill; yet, at the same time, the Brown bill will pay off in full 96½ percent of the depositors in all the banks; that is, national and Federal Reserve banks, the State and private banks. It will bring relief which will be a Godsend to the majority of the people because it will pay off in full 19 out of every 20 depositors. This is true because of the fact that 96½ percent of the depositors have only 23 percent of all the money on deposit and 3½ percent of the depositors have 77 percent of the total deposits. Summing it all up, 3½ percent of the large depositors have over three fourths of all the money that was on deposit in all the banks.

I feel that now is the time to show the courage and resolution to crack the ice—to break with the past—and adopt this bill for the general welfare, not only of my people but for all people under this Government; for, obviously enough, people everywhere must have suffered some loss through bank closings.

This willingness on the part of our Government to help our people in this way is certainly above the anarchy and chaos of undisciplined individuals' interest. The prompt, vigorous, and intelligent administering of this measure will go farther towards helping the debtor, the creditor, the farmer, and worker and management than anything else at present. It will inspire people to save again; it will give our people a newer and higher confidence in mankind and our Government and it will certainly tend to make business relations and credit relations bigger and broader between our people.

There is no reason to fear that legislation of this kind will not have far-reaching beneficial effects. The new deal administration has enacted many changes in Government which have served as a great credit to our people; for example, cognizance has been taken of the ironical spectacle of the depression—which presented the paradox of surplus crops and industrial output and of bulging warehouses coexisting with an appalling ratio of unemployment and idle plant capacity. The new deal has made a real effort to solve the stupid enigma of human suffering amidst plenty.

The new deal has done much for our people. No one can say that the magnanimous leadership of our great President is not recognized everywhere. But there still is work to be done, and I feel that a great deal of this work lies in some solution to help the poor souls who lost their all in bank failures. And I do not mean the bank failures of the thirties, but the failures that occurred back in the twenties. These people who lost their money through no fault of their own should be given some consideration.

The reason I am so interested in this bill is that I feel that it will place the money in the hands of the people who most need it, the people who have suffered and been deprived of the necessities of life throughout this terrific depression. If this bill becomes a law, those people will be able to save their homes, pay their taxes again, now long past due, and will feel the spirit of renewed confidence in their Government.

Knowing the hardship of my people, knowing what they have gone through to save this money, knowing the self-denial of fathers and mothers knowing how they passed up the good things in life because they were saving for a rainy day—and I mean, in a great many instances, denied themselves the necessities of life, so that they would have this money in their declining years—only to have it wiped away during this terrific depression, I cannot but sympathize with them now and hope for some bank pay-off relief.

Many a father and mother, who had thought themselves safe from a dark and dreary future during 1927, 1928, and 1929, found in 1930 that they were on the road to the poorhouse; not through any fault of theirs but through the mismanagement and mishandling of funds by the banking institutions. They found it impossible to go to their children because their children too were without jobs and had lost their money also in closed institutions.

There is no question but that it is a sad picture I have painted here this afternoon, but if there ever was a time when the working people of the United States should unite, this is the time to see that justice is done.

Once and for all, get behind our great leader and help him in the program he has enacted so that we may all once again enjoy prosperity.

JUSTICE DEMANDS THAT CONGRESS ENACT OLD-AGE SECURITY LEGISLATION

Mr. JOHNSON of Oklahoma. Mr. Speaker, I ask unanimous consent to extend my remarks in the RECORD.

The SPEAKER. Is there objection?

There was no objection.

Mr. JOHNSON of Oklahoma. Mr. Speaker, this Congress has already accomplished many needed reforms in the way of remedying social injustices, but much more remains to be done. We have traveled a long way from the path of rugged individualism, ruthless competition, and unregulated economic piracy which led us into a sorry swamp of financial panic from which this Nation was fortunate to escape without serious consequences.

But the fight is only beginning. Much more remains to be done. Nothing is more vital, in my judgment, to the fulfilling of the new deal in all of its phases than the passage of an adequate old-age pension law. We have enacted much so-called "emergency legislation." It is now time for us to give attention to a problem that demands some permanent legislation to protect our farmers and laborers in their old age.

We have provided funds through the Civil Works Administration and the Federal Emergency Relief Administration to make many needed civic improvements. City parks have been beautified, public buildings redecorated, schools repaired and painted. But the one thing, in my judgment, that would do more to make this great land of ours a more beautiful country would be to pass legislation that will close up forever every poorhouse in the country. And we can do that at an annual cost of a little more than the sum needed to build a first-class battleship.

We have gone a long way from the path of rugged individualism in the past year under the leadership of our great President. We are doing many things now that would have seemed highly improbable and virtually impossible even 2 years ago, before the tide of resentment had turned the old order out.

Two years ago, it would have been declared highly improbable that an old-age pension bill could have reached the calendar of this House for consideration in 1934. Yet that has been done. By a unanimous vote of the Committee on Labor there has been referred to this House for action the so-called "Dill-Connery bill."

That bill is not entirely satisfactory to me and I hope that it will be possible to amend it. I have prepared some amendments I hope will be made. In the first place, I want to see this plan made effective immediately in every State in the Union and my amendments will do that. Fur-

thermore, I feel that it is no more than fair that the Federal Government should increase the amount of its participation with the States over the 30 percent provided in the proposed bill.

It must be remembered that there are now no old-age pension laws in 20 of our States. I submit that it is unfair to these States to require them to wait until their legislatures can enact adequate laws before they participate in these benefits. My plan proposes a way that this can be done and also proposes to permit the people to act on old-age pension legislation by the initiative petition route in those States which have this method of legislation. I have no quarrel to pick with those who wish to have State participation. Neither am I opposed to a plan whereby the Federal Government would pay the entire pension. All I am interested in is getting old-age pension legislation and getting it at this session. I am not in favor of adjourning, even though we stay here all summer, until some adequate old-age pension is put on the statute books.

The committee reporting out this bill has made a very interesting and convincing report. I wish that every Member of this House, whether or not he is now in favor of this legislation, would read that report. It will open the eyes of many as to the real need of this legislation and its fundamental justice.

But I do not think there is any use of discussing the question of whether or not this legislation is justified. I feel that this question is virtually settled in the minds of those who have given the matter any study.

I am reminded of what Mrs. Franklin D. Roosevelt said in an address in this city not long ago, when she declared:

> We do not have to discuss the merits of old-age security. We have come a long way beyond that. We have accepted the fact that old people who have worked but who have not been able to provide for old age have a right to be cared for in the last years of their life.

Any of us can cite a few instances of people we know personally to see the justice of that. The economic crash of the last few years has taught us many things. It is well enough to inquire, Why did not they save for a rainy day? But what of the aged couple who invested their savings in bonds that now are worthless. What of those who invested in stocks that can be sold only for a fraction of their purchase price and which pay no dividends? What of those who invested their savings in a farm which has failed to make enough revenue to pay the taxes? What of those who placed their money in savings accounts, only to have the banks fail? The last 4 years has shown us that no form of investment was safe. More than that, what of the millions of men who have earned salaries of a few dollars a week and have attempted to give their families proper nourishment and clothing and to educate their children? Their meager earnings permitted no great savings.

I submit that we are facing a problem that society alone, through the government set up to protect the weak from the strong and to enable us to enjoy the fruits of life, liberty, and the pursuit of happiness, can adequately meet.

I am no new convert to this theory. I have been advocating protection for our aged for many years, even during the era of rugged individualism, when this problem had not attracted the attention of the public and when it was opposed by many well-meaning persons.

The first speech I ever made on the floor of this House, nearly 8 years ago, was on the subject of pensions. At that time I was opposing a monstrous and unreasonable bill to pension rich Federal Reserve bank officials, many of whom were drawing princely salaries of as high as $50,000 a year.

On that day I stood on this floor and declared:

> We have almost countless aged, dependent, and deserving citizens whom the Congress might well aid rather than rich reserve bank officials.

At that time it was possible to bring on the floor of this House a bill to pension reserve bank officials, but there was not a chance in the world to get an old-age pension bill started in the committee, even. All we did that session on the subject was to discuss whether an old-age pension bill should go to the Pensions Committee or to the Judiciary Committee.

But since that day there have been many changes. More than half of the sovereign States have enacted old-age security legislation. Ten States passed such laws in 1933. Iowa only recently adopted an old-age pension law. States which have this legislation now are Arizona, California, Colorado, Delaware, Idaho, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oregon, Pennsylvania, Utah, Washington, West Virginia, Wisconsin, and Wyoming.

The committee has gathered some interesting information on this subject. Permit me to quote from the report concerning the experience of California:

> Two years' experience with a pension law in California, where over 10,000 people are receiving pensions, shows that the average pension during that period amounted to $22.93 per month. The average annual cost to the taxpayers during the first 2 years amounted to 25.8 cents per capita. It cost every California taxpayer only 17.1 cents per year for each $1,000 of assessed taxable wealth.
>
> The average cost of an almshouse inmate in California amounts to $44.74 per month in comparison with a pension cost in February 1932 of $23.03. In other words, by placing an aged person on a pension instead of sending him to a poorhouse, California is saving $21.66 per month, or $259.92 per year.
>
> The California law has already caused 500 old men and women to leave the county almshouses in the State and has prevented over 4,000 aged persons from entering the poorhouses in the last 2 years of depression. The California experience shows conclusively that if only half the present pensioners were cared for in almshouses the cost would be as great as the amount spent today to support twice that number through a system of self-respecting pensions.
>
> Practically all county boards in California administering the old-age pension law are enthusiastic in the praises of its workings. The following are a few typical comments:

Every State that has adopted an old-age pension law has found that it is much cheaper than the old poorhouse system. Public officials have been highly pleased with the results.

The welfare agent of the Colusa Board of Supervisors has this to say about the California law:

> We cannot find any fault with the law. Since getting old-age security many of these people are happier than for many years. Their health has improved greatly, as they are now getting enough to eat. It is much cheaper for the county to allow this "security." It costs at least $1 a day to keep these people in the county institution. Most of the men living alone are given $20 per month.

I submit that this is not charity but simply justice. There is no use to quibble about the cost. The committee estimates that if all of the States and Territories adopted this legislation, that there would be about 484,000 persons drawing pensions, and that the total cost would be $133,000,000 a year. The committee further states that this total cost of $133,000,000 is far less than the present cost of caring for these people and those who are in the workhouses combined. The sum this Nation expended on the World War alone would pay these pensions for more than 300 years.

But there are some who will ask, Where will Congress find the money to pay for such a program? There is no justification in protesting that this great and wealthy Government cannot find the necessary revenue for this. An increase of 11 percent in the present income-tax rates could provide the necessary funds. The United States Senate has just added a 10-percent increase to the revenue bill over the figures as passed by the House, which I sincerely hope the House will agree to. I would also materially increase the estate tax, gift tax, corporation tax, and surtax, or excess-profit tax. That would more than pay for an old-age pension or old-age-security plan.

Then, I would also pass my bill that his been pending here a long while to tax stock exchanges 1 percent of all sales made by those gambling in stocks. My bill would bring in over $300,000,000 a year, which alone would more than bring in the necessary revenue. So the argument falls flat that Congress cannot find the money.

Of course, ultimately Congress is going to do justice to our deserving and dependent old people. Public sentiment demands that justice be done them. Why not do so now?

GUARANTEE BANK DEPOSITS—FEDERAL DEPOSIT INSURANCE CORPORATION—PERMANENT PROVISIONS OF THIS LAW SHOULD GO INTO EFFECT JULY 1, 1934

Mr. BUSBY. Mr. Speaker, I ask unanimous consent to address the House for 15 minutes.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

Mr. BUSBY. Mr. Speaker, I desire to speak just a short time on a measure that will presently come before the House. A proposal to defer the permanent provisions of the bank guaranty law which, if not amended, will go fully into effect July 1, 1934.

During the last session of Congress we passed a law to guarantee bank deposits. Not exceeding $2,500 of deposits to any one account is guaranteed by the temporary provisions of the bill which is now in effect—and will remain in effect to July 1, 1934.

After July 1, 1934, when the permanent provisions go into effect deposits will be guaranteed 100 percent up to $10,000. Deposits from $10,000 to $50,000 will be guaranteed 75 percent of the amount of the deposits and from $50,000 and over they will be guaranteed 50 percent.

AMERICAN BANKERS ASSOCIATION AGAINST THE LAW

There is a move on in this country to defer the effective date of the guaranty law and keep the temporary provisions in effect to limit the guaranty of deposits to $2,500 and no more until July 1, 1935. This move comes from the American Bankers Association. They have recently passed a resolution, in effect, demanding that the full application of the bank guaranty law be deferred until July 1, 1935.

LITTLE BANKS PAY; BIG ONES ESCAPE

There is a reason for this. Banks pay insurance only on the amount of the deposits guaranteed. If deposits of $2,500 and less are guaranteed, the small bank will pay a guarantee fee on practically all of its deposits, because its deposits are made of small accounts, but the larger institutions that have deposits of $50,000, $100,000, and $150,000 and more will pay on a very small part in proportion to the total amount of their deposits compared with the small banks.

This is the evil that results. We will suppose a town here of 10,000 people; the bank in that town has a factory owned by people who live away in the larger centers of the country. They keep their pay roll in the bank in the small town, they keep enough funds there to transact the business, $25,000 or $30,000; if these funds are not guaranteed, as they are not under the temporary provisions of the law, they will be pulled out of the small bank and carried to the larger center where they feel there is little chance of a bank failure. The result is that by continuing the temporary provisions we deprive the small banks of the deposits accounts that are more than $25,000, thereby contributing greatly to the closing of banks from which such larger uninsured deposits have been drawn.

Mr. ARNOLD. Will the gentleman yield?

Mr. BUSBY. I yield.

Mr. ARNOLD. The larger banks will not receive any assurance of a guaranty in excess of $2,500 and I do not see how the conclusion that the gentleman draws would necessarily follow.

BIG ACCOUNTS MOVED TO BIG BANKS

Mr. BUSBY. It necessarily follows because we have been told in the committee that in many instances the manufacturing plant that had $15,000 or $20,000 in the small bank, even before the guaranty law went into effect, moved these deposits to a larger bank in New York City in order that they may be safe from a bank failure.

Mr. ARNOLD. But they do not have any insurance on their deposits when they move them to the large bank.

Mr. BUSBY. They certainly do not.

Mr. ARNOLD. It might cause a dissipation of such funds by scattering them among the smaller banks of the country or among the banks generally, but they certainly cannot gain any advantage by taking them out of a small bank and putting them in a large bank.

Mr. BUSBY. They do gain this advantage, they think, by putting them in the Chase National Bank of New York. They feel practically positive that there is not going to be a failure of that bank, but by leaving the large deposit in the small bank, which is not guaranteed above $2,500, they feel they are taking some chance, and therefore they rob the small banks of these large deposits and carry them to the larger centers.

Mr. PATMAN. Will the gentleman yield?

Mr. BUSBY. I yield.

Mr. PATMAN. I aimed to discuss that matter, but I did not have the time. I am sorry I find myself in disagreement with the gentleman about the matter. Does not the gentleman think that since the Government of the United States is paying about two thirds of the insurance premium in guaranteeing these deposits, whenever we guarantee all of them up to $2,500, that is enough and that we should not guarantee these $32,000,000 accounts?

Mr. BUSBY. If the gentleman had heard the witnesses testify, I think the gentleman would be more in accord with what I have suggested. They do not in any event guarantee them 100 percent above $10,000.

Mr. PATMAN. They guarantee a percentage, however.

Mr. BUSBY. Here is the error in the gentleman's conclusion. The banks are required to pay only on the amounts they have insured and since the larger banks of the country, which are not likely to fail, are not being called on for any insurance fund, they escape responsibility to the bank guaranty fund, thereby taxing the Government and the small bank disproportionately to maintain the guaranty fund.

Mr. PATMAN. They pay insurance or a premium on all the accounts up to $2,500?

Mr. BUSBY. Yes.

Mr. PATMAN. Just like all other banks, so there cannot be any discrimination?

Mr. BUSBY. Yes; because the accounts, as they run in the larger banks, on the average, are much larger than in the smaller banks.

Mr. PATMAN. But they do not pay on them.

Mr. BUSBY. That is where they escape responsibility.

Mr. PATMAN. They do not get the insurance either.

Mr. BUSBY. They do not want the insurance. They say, "We can take care of ourselves. If you will let us alone and not charge us this insurance we can take care of ourselves."

Mr. PATMAN. Why should we insist on giving them insurance at our expense? You know the Government is paying two thirds of the insurance premium and if they do not want this insurance, why should we make them take it at the expense of the people?

Mr. BUSBY. We require them to carry insurance for the protection of depositors, not for the banks. That is all I have to say about it.

TWELVE BANKS WITH $20,000,000,000 RESOURCES

I remember about 3 years ago a list of 12 banks was announced which had $20,000,000,000 of resources.

Now, not one of these 12 banks has failed, and all we get out of them is the insurance premium on $2,500 accounts. If we had the law in full force we would get a premium out of them on the deposits that make up the $20,000,000,000. These banks have not broken down, but they are the big fish that eat the little fish in your district and in mine; the big banks that consume the little ones. I want them to be responsible to the policy that makes the little banks fail. How do they make them fail? You remember in the bank investigation in the Senate that the South American bonds

are not in the hands of these banks. They shunted the commercial paper off to the little banks and gathered in United States bonds and securities—a secondary money. For that reason we want them to come in and help pay the insurance to take care of the little banks should they break.

Mr. ZIONCHECK. The Government pays two thirds of the insurance premium.

Mr. BUSBY. I do not think that is true. Now, let me proceed. I want to call attention to another thing. I read from an editorial which appeared in this morning's Post, edited by Eugene Meyer, former Governor of the Federal Reserve System. He was at the head of the Reconstruction Finance Corporation at one time, and played a prominent part in the last administration's financial policy.

He was quoting the president of the insurance set-up. I might say that the head of this insurance corporation this week made a speech before the American Bankers' Association at Hot Springs, W.Va., in which he urged strongly that the date of the bank guaranty be deferred until July 1, 1935. The editorial says:

It would be impossible, he says, to examine all the member banks between now and July with a view to determining their solvency, hence their eligibility for participation in the permanent plan. In addition, investigations have to be made into the condition of nonmember banks adhering to the guaranty system.

The basic defects of the deposit-guaranty plan make it highly desirable to defer the date of transition from the present temporary system to the permanent one. That will give Congress an opportunity to reconsider its hasty action in approving a guaranty plan that puts a premium upon irresponsible banking practices, and imposes unlimited liabilities upon insured institutions. There will also be time in which to devise legislation to correct those fundamental weaknesses of our uncoordinated dual banking system which have contributed largely to our bank failures.

In the absence of constructive legislation, the country cannot escape a recurrence of bank closings. Introduction of a system of deposit guaranty which invites relaxation of customary restraints upon bank managements would make future disturbances even more devastating than those that lie behind us.

If there are going to be more bank failures they want to avoid the plan that would take them into the general bank set-up of the country. If we are to have bank failures let us have them within the guaranty.

BIG BANKS WANT TO AVOID GUARANTEE LAW

They want to stay out of the permanent effect of this law, so that their millions of deposits, drawn away from the other sections of the country and placed in large banks for safety because of the size of the institution, will contribute nothing to this guaranty for large deposits fund; and if the gentleman from Texas [Mr. PATMAN] is right, that the Government pays two thirds of it, they want the Government to continue to pay two thirds. They do not want to have any part in this affair which would make them responsible in a proportionate degree for the bank failures that the small banks are, failures of which in part, caused by their business policies.

In this House on May 22, 1933, we discussed the very act that I am now calling to your attention. At that time I said:

In order to guarantee anything, the thing you undertake to guarantee should be worthy of the guaranty. We ought to guarantee a banking set-up that is worthy of guaranty. I am going to support this proposition because later, after we pass the guaranty law, it will be up to the Government to see to it that we have a banking set-up that is worthy of the guaranty that we place upon it, regardless of what it costs.

Also:

But our banking system is the poorest one in the world from the standpoint of safety to the depositor.

And further:

Our bank deposits cannot be guaranteed and made safe by the little amount of funds that we are providing in this bill.

I still believe that. In closing, I said:

Yet I am going to vote for this bill because I think the Government will be forced to set up a banking system that the people can depend on after it gets behind the guaranty.

I do not believe that the banking system of this country is capable of coping with the problems that confront it. I know that whenever prices fall, when commodities go down and properties on which banks have mortgages depreciate in value, which they cannot sell and restore the credit they loaned on them, the banks must fail. The banks do not fail until the community around the banks fails.

I know that the system and the big banks of this country know that the system that we are called upon to guarantee here cannot stand in the face of adversity when falling prices set in in the manner that we have witnessed them in the last few years. But, as the gentleman from Texas [Mr. PATMAN] quoted me a while ago as saying what I have often said, "this Government has never undertaken to meet its responsibility and furnish a dependable media of exchange for business, commerce, and industry." What has it done? It provides about one tenth of the amount necessary in currency. It then depends upon the commercial banking set-up, and the commercial banking set-up did not agree to furnish the other 0.9 in checking accounts, not at all.

The SPEAKER pro tempore. The time of the gentleman from Mississippi has expired.

Mr. HASTINGS. Mr. Speaker, I ask unanimous consent that the gentleman have 1 minute more.

Mr. ZIONCHECK. Mr. Speaker, I ask unanimous consent that the gentleman be permitted to proceed for 5 minutes more.

The SPEAKER pro tempore. Is there objection?

There was no objection.

Mr. HASTINGS. Mr. Speaker, will the gentleman yield?

Mr. BUSBY. Yes.

Mr. HASTINGS. Do the hearings disclose whether any banks have failed since the 1st of January, since this bill went into effect; and, if so, how has the bill operated in the payment of deposits up to $2,500?

Mr. BUSBY. There has not been a single bank failure since the law went into operation, and there is no indication that there is any immediate danger of bank failures. Conditions seem to be getting better with the banks.

Mr. HASTINGS. That shows justification for the enactment of the legislation?

Mr. BUSBY. Yes, and on the other hand we have testimony to show that the same banks have increased 200 and 300 percent in deposits in communities where there is no especial reason except the fact that the people brought their funds in and put them into the banks, knowing that the Government was back of the funds that they were placing in the banks.

Mr. DONDERO. The gentleman means in the communities where the insurance law has gone into effect, it would affect those institutions?

Mr. BUSBY. Yes.

Mr. DONDERO. But not otherwise?

Mr. BUSBY. No. These may be sporadic instances, but they have been related. All deposits show an increase and banks in a healthier condition. No more runs on banks.

If the Government is going to depend upon this set-up in order to have a media of exchange—that is, check money so necessary with which to do business, and I want to say that I believe check money is the most practical type of money that we can use in this country, because every man who has property can issue check money against that property as it is appraised with the cooperation of the bank, and it will not cause any undue inflation—if the Government is going to depend on this banking set-up, it ought to make the banking set-up so substantial that the people can depend upon it also.

GOVERNMENT NEEDS FULL DEPOSIT GUARANTEE LAW

For that reason we must have a full bank guarantee law in this country for depositors who place their funds in these institutions. Otherwise we will have McLeod bills and all other kinds of legislation creating claims against the Government when the Government had not agreed to meet them.

Mr. ZIONCHECK. Mr. Speaker, will the gentleman yield?

Mr. BUSBY. I yield.

Mr. ZIONCHECK. Does not the gentleman really believe that the only solution to this banking situation is for the Government to take over all the banks?

Mr. BUSBY. It certainly does look to that end.

UNCLE SAM MUST ACT IN SELF-DEFENSE

Now, whether it takes them over by guaranteeing the present bank set-up and so examining, inspecting, and appraising their assets and managing those assets as to make them usable and dependable to the people, or whether it does it in some other way, is the question that the future must solve; but we cannot go back to an unguaranteed, loose, badly managed, poorly supervised system of banking, into which the people are required to put their money and values in order that we may have a media-of-exchange machine.

Mr. BLANTON. Mr. Speaker, will the gentleman yield?

Mr. BUSBY. I yield.

Mr. BLANTON. Extending the principle of the McLeod bill ad infinitum, there are black lands down in Texas with rich soil running 15 feet deep—lands which will never need fertilizer—that were worth $250 an acre, but which by reason of the money situation and bank failures, have decreased in value to $40 or $50 per acre. Ought we not to restore the former value to this land if we pay bank losses?

Mr. BUSBY. I think the gentleman's question answers itself. I do not care to get into that; but certainly we must know that we cannot pay all bad bank claims any more than we can pay all bad land claims. If a bank fails and I have a claim against it, I am in no different situation than if the value of my farm falls and I find myself with a debt instead of a farm.

[Here the gavel fell.]

Mr. BLANTON. Mr. Speaker, I ask unanimous consent that the gentleman's time may be extended 5 minutes.

Mr. MARTIN of Massachusetts. Mr. Speaker, reserving the right to object, is this going to be the last extension?

Mr. BUSBY. It will be the last one I shall accept; I promise the gentleman that.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. BLANTON. Mr. Speaker, will the gentleman yield?

Mr. BUSBY. I yield.

Mr. BLANTON. Just this one question, if the gentleman will permit: Take the case of a man who bought United States Steel at $265 a share in the days when business was good, and a Republican President was advising him to buy stocks, the value of which stock has now gone down to about $50 a share; what about paying such losses as that if we are to pay off bank losses?

Mr. BUSBY. Mr. Speaker, that is a very fine question. Answering the gentleman, I may say that with all the light before us as to values and the continuation of those values throughout a period of many years men bought steel, they bought General Motors, they bought other stocks, and they bought property. In the light of what they could secure for the produce made on the land they purchased, and when prices failed, when the tumble in values came, they were not and could not be chargeable with any fault of not properly appraising the property. The fault lay with the system under which we were operating. That caused the destruction of our people financially; and that system will cause the destruction of people continuously until we change it, until the Government comes forward and by its act sets up a dependable machine which the people can use in transacting their business.

I am not talking about coining or printing currency, although that is the only thing the Government has done to meet its responsibility. It has put out a small amount of currency. Just now the amount is entirely too little.

THE BANK-CREDIT MACHINE BROKE DOWN

The Government's responsibility, then, is to come forward and furnish money to take the place of the checks that were used formerly, so that the people can go ahead with their business and not be absolutely stopped because the bank-credit machine broke down.

Mr. HEALEY. Mr. Speaker, will the gentleman yield?

Mr. BUSBY. I yield.

Mr. HEALEY. Of course, the gentleman differentiates between the person who deposits his funds in a bank and the person who speculates in land in Florida, or in stocks, or who bets on a horse race. The person who buys land, who buys stock, or who bets on a horse race, or anything else, is operating in the realm of speculation and expects to take his chance of a loss as well as of a win. Certainly the gentleman does not expect the person who puts his money in a bank to take the same kind of a chance; and certainly the gentleman does not put such a person in the same category with the speculator I have referred to.

BANK DEPOSITORS TAKE BIG CHANCE

Mr. BUSBY. To answer the gentleman's question literally, when we look around and see that since 1920 more than 15,000 banks have failed, when we see that the number of banks have declined from 30,000 in 1920 to less than 15,000 today, I think the gentleman will agree with me that the person who put his money in the bank was a bigger speculator than the man who bought land in Florida.

Mr. HEALEY. He should not be, though, should he?

Mr. BUSBY. No. I am coming to that. To answer the gentleman's question, let me explain that the bank depositor was a speculator not because he desired to speculate but because the Government of the United States has never furnished him a dependable situation where he could take care of himself. It is the fault of the system.

If we, as a Congress, go through this depression and do not enact some laws that will change this fundamental error that is thrown upon us every 7 or 8 years, we ought to be dubbed anything else but a bunch of thinkers.

Mr. DONDERO. Does not the gentleman think we can correct a part of that erroneous system by the passage of the McLeod bill, putting the people in a position where they will have some confidence in the Government?

Mr. BUSBY. I cannot see the principles of the McLeod bill, because it is not fair to the Treasury of the United States, which is supported by the taxpayers of the country. You are picking out national banks and member banks of the Federal Reserve System and paying their depositors 100 percent, and other people who were depositors of State banks will not be considered.

[Here the gavel fell.]

Mr. GOSS. Mr. Speaker, I make the point of order there is not a quorum present.

The SPEAKER. Will the gentleman withhold that a moment?

Mr. GOSS. I withhold it, Mr. Speaker.

LEAVE OF ABSENCE

By unanimous consent leave of absence was granted as follows:

To Mr. McDUFFIE, indefinitely, on account of illness in family.

To Mr. HESS (at the request of Mr. HOLLISTER), indefinitely, on account of illness.

EXTENSION OF REMARKS

Mr. PATMAN asked and was given permission to revise and extend his remarks in the RECORD.

SENATE CONCURRENT RESOLUTION REFERRED

S.Con.Res. 13. To authorize the printing of additional copies of the hearings held before the Special Committee Appointed to Investigate Air- and Ocean-Mail Contracts, was taken from the Speaker's table and under the rule referred to the Committee on Printing.

Mr. GOSS. Mr. Speaker, I renew my point of order that there is not a quorum present.

The SPEAKER. Evidently there is not a quorum present.

ENROLLED BILLS SIGNED

Mr. PARSONS, from the Committee on Enrolled Bills, reported that that committee had examined and found truly enrolled a bill of the House of the following title, which was thereupon signed by the Speaker:

H.R. 7483. An act to provide minimum pay for postal substitutes.

The SPEAKER announced his signature to enrolled bills of the Senate of the following titles:

S. 2084. An act granting and confirming to the East Bay Municipal Utility District, a municipal utility district of the State of California and a body corporate and politic of said State and a political subdivision thereof, certain lands, and for other purposes; and

S. 3296. An act to revive and reenact the act entitled "An act granting the consent of Congress to Meridian and Bigbee River Railway Co. to construct, maintain, and operate a railroad bridge across the Tombigbee River at or near Naheola, Ala.", approved January 15, 1927.

ADJOURNMENT

Mr. BYRNS. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 2 o'clock and 45 minutes p.m.), the House adjourned until tomorrow, Saturday, April 21, 1934, at 12 o'clock noon.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

415. A communication from the President of the United States, transmitting draft of a proposed provision of legislation pertaining to the Procurement Division, Treasury Department (H.Doc. No. 310); to the Committee on Appropriations and ordered to be printed.

416. A letter from the Secretary of War, transmitting a recommendation for the passage of H.R. 8235, introduced by the Delegate from Hawaii; to the Committee on the Territories.

417. A communication from the President of the United States, transmitting supplemental estimates of appropriations for the legislative establishment, House of Representatives, fiscal year 1934, in the sum of $8,165.58 (H.Doc. No. 311); to the Committee on Appropriations and ordered to be printed.

418. A communication from the President of the United States, transmitting a supplemental estimate of appropriation for the legislative establishment, House of Representatives, fiscal year 1934, in the sum of $37,000 (H.Doc. No. 312); to the Committee on Appropriations and ordered to be printed.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII,

Mr. BOLAND: Committee on Naval Affairs. H.R. 6803. A bill to regulate the distribution, promotion, retirement, and discharge of commissioned officers of the Marine Corps, and for other purposes; with amendment (Rept. No. 1279). Referred to the Committee of the Whole House on the state of the Union.

Mr. VINSON of Georgia: Committee on Naval Affairs. H.R. 9068. A bill to provide for promotion by selection in the line of the Navy in the grades of lieutenant commander and lieutenant; to authorize appointment as ensigns in the line of the Navy all midshipmen who hereafter graduate from the Naval Academy, and for other purposes; with amendment (Rept. No. 1280). Referred to the Committee of the Whole House on the state of the Union.

Mr. LANHAM: Committee on Public Buildings and Grounds. H.R. 8514. A bill authorizing the Secretary of the Treasury to convey a part of the post-office site in San Antonio, Tex., to the city of San Antonio, Tex., for street purposes, in exchange for land for the benefit of the Government property; without amendment (Rept. No. 1281). Referred to the Committee of the Whole House on the state of the Union.

Mr. KENNEDY of Maryland: Committee on the Disposition of Useless Executive Papers. A report on the disposition of useless papers in the Department of State (Rept. No. 1282). Ordered to be printed.

Mr. KENNEDY of Maryland: Committee on the Disposition of Useless Executive Papers. A report on the disposition of useless papers in the Government Printing Office (Rept. No. 1283). Ordered to be printed.

PUBLIC BILLS AND RESOLUTIONS

Under clause 3 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. MORAN: A bill (H.R. 9255) for the relief of depositors in closed national banks; to the Committee on Banking and Currency.

By Mr. ELLENBOGEN: A bill (H.R. 9256) to give the circulation privilege to the bonds of the Home Owners' Loan Corporation and of the Federal Farm Mortgage Corporation, to amend the laws relating to Federal Reserve banks and to national banking associations, and for other purposes; to the Committee on Banking and Currency.

By Mr. KINZER: A bill (H.R. 9257) granting the consent of Congress to the Commonwealth of Pennsylvania to construct, maintain, and operate a toll bridge across the Susquehanna River at or near Bainbridge, Lancaster County, and Manchester, York County; to the Committee on Interstate and Foreign Commerce.

By Mr. TAYLOR of Tennessee: A bill (H.R. 9258) to provide for the acquisition by the United States of the Grand Caverns in Knox County, Tenn.; to the Committee on the Public Lands.

By Mr. SHOEMAKER: Resolution (H.Res. 344) to impeach Joseph W. Molyneaux, United States district judge for the district of Minnesota of high crimes and misdemeanors; to the Committee on the Judiciary.

By Mr. McCORMACK: Joint resolution (H.J.Res. 329) to provide for the naming of the Veterans' Administration facility at Bedford, Mass.; to the Committee on World War Veterans' Legislation.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of Rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. BACHARACH: A bill (H.R. 9259) for the relief of Walter C. Holmes, United States Coast Guard; to the Committee on Claims.

By Mr. CULKIN: A bill (H.R. 9260) for the relief of Ford O. Gotham; to the Committee on Claims.

Also, a bill (H.R. 9261) for the relief of James McCumber; to the Committee on Claims.

Also, a bill (H.R. 9262) for the relief of Frank P. Redfield; to the Committee on Claims.

By Mr. COLE: A bill (H.R. 9263) for the relief of Louis F. Bromfield; to the Committee on Claims.

By Mr. COLMAR: A bill (H.R. 9264) to authorize the conveyance by the United States to the Allen B. Carter Post, No. 24, of the American Legion Department of Mississippi, Inc., lots nos. 148 and 149 of the D. H. McInnis first survey and addition to the city of Hattiesburg, being situated on the corner of Pine and Forrest Streets and having a frontage of 100 feet on the east side of said Pine Street and 150 feet on said Forrest Street in the said city of Hattiesburg, Forrest County, Miss., as per plat thereof of record in the office of the chancery clerk of said Forrest County, Miss.; to the Committee on Public Buildings and Grounds.

By Mr. DISNEY: A bill (H.R. 9265) for the relief of Orvin Gerald Hodge; to the Committee on Military Affairs.

By Mr. MERRITT: A bill (H.R. 9266) granting a pension to Lydia M. Richards; to the Committee on Pensions.

By Mr. MOTT: A bill (H.R. 9267) for the relief of the port of Bay City in Tillamook County, Oreg.; to the Committee on Claims.

PETITIONS, ETC.

Under clause 1 of rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

4105. By the SPEAKER: Petition of St. Patrick's Holy Name Society, of St. Patrick's parish, Jersey City, N.J., urging adoption of the amendment to section 301 of Senate

bill 2910; to the Committee on Merchant Marine, Radio, and Fisheries.

4106. Also, petition of the board of supervisors of Oakland County, Mich., urging passage of the McLeod bank bill; to the Committee on Banking and Currency.

4107. Also, petition of the Transfiguration parish of the borough of West Hazleton, Pa., urging adoption of the amendment to section 301 of Senate bill 2910; to the Committee on Merchant Marine, Radio, and Fisheries.

4108. Also, petition of St. Peter's parish of Lowville, N.Y., urging adoption of the amendment to section 301 of Senate bill 2910; to the Committee on Merchant Marine, Radio, and Fisheries.

4109. Also, petition of the Holy Name Society of St. Mary of Celle parish, of Berwyn, Ill., urging adoption of the amendment to section 301 of Senate bill 2910; to the Committee on Merchant Marine, Radio, and Fisheries.

4110. By Mr. ANDREWS of New York: Resolution adopted by the Legislature of the State of New York, memorializing Congress to provide additional appropriations for highway construction; to the Committee on Appropriations.

4111. Also, resolution adopted by the Senate of New York State, memorializing Congress to amend the Securities Act of 1933; to the Committee on Interstate and Foreign Commerce.

4112. By Mr. BEAM: Resolution by the National Alliance of Bohemian Catholics, relative to Senate bill 2910; to the Committee on Merchant Marine, Radio, and Fisheries.

4113. By Mr. BRUNNER: Petition of Colfax Garden Civic Association, Bellaire, Queens County, N.Y., to investigate the present chaotic conditions that are prevalent in said Postal Service, and that proper action be taken by the Congress to return to the former rates of postage, namely, 2 cents per ounce on first-class mail matter; that all substitute clerks and carriers be granted hours and employment in said service for which they shall be paid not less than $15 per week; that the local postal heads be ordered to cause two deliveries of mail to home owners, etc.; to the Committee on the Post Office and Post Roads.

4114. By Mr. CULKIN: Resolution of St. Peter's parish of Lowville, Lewis County, N.Y., having a membership of 1,350, favoring an amendment to section 301 of Senate bill 2910 providing for the insurance of equity of opportunity for all non-profit-making associations seeking licenses for broadcasting, by writing into the Statute a provision for the allotment to said non-profit-making associations of at least 25 percent of all radio facilities not employed in public use; to the Committee on Interstate and Foreign Commerce.

4115. Also, memorial of St. Joseph's parish of the village of Philadelphia, N.Y., urging an amendment to section 301 of Senate bill 2910 providing for the insurance of equity of opportunity for educational, religious, agricultural, labor, cooperative, and similar non-profit-making associations seeking licenses for radio broadcasting; to the Committee on Merchant Marine, Radio, and Fisheries.

4116. Also, petition of citizens of Chittenango, N.Y., favoring the passage of the McLeod bill; to the Committee on Banking and Currency.

4117. Also, petition of the Senate of the State of New York, urging amendment of Securities Act of 1933 by eliminating all of its civil-liability provisions to the end that business, by being permitted to finance itself, may thereby be in a position to finance employment when the ability of the Government so to do is exhausted; to the Committee on Banking and Currency.

4118. Also, memorial of the Legislature of the State of New York, urging that Congress appropriate $500,000,000 for the purpose of carrying on and supplementing the road-building program throughout the various States; to the Committee on Roads.

4119. By Mr. DONDERO: Petition of the board of supervisors of Oakland County, Mich., urging the enactment of legislation for the full pay-off of deposits in closed State and national banks affiliated with the Federal Reserve System 1 year prior to their closing; to the Committee on Banking and Currency.

4120. Also, petition of the Wayne County Board of Supervisors of Wayne County, Mich., urging the passage of the McLeod bank pay-off bill (H.R. 7908); to the Committee on Banking and Currency.

4121. By Mr. GOODWIN: Petition of members of St. Mary's Church, Ellenville, Ulster County, N.Y., urging support of amendment to section 301 of Senate bill 2910, providing for the insurance of equity of opportunity for educational, religious, labor, agricultural, cooperative, and similar non-profit-making associations seeking licenses for radio broadcasting by incorporating into the statute a provision for the allotment to said non-profit-making associations of at least 25 percent of all radio facilities not employed in public use; to the Committee on Merchant Marine, Radio, and Fisheries.

4122. Also, petition of members of St. Joseph's parish, New Paltz, Ulster County, N.Y., urging support of amendment to section 301 of Senate bill 2910, providing for the insurance of equity of opportunity for educational, religious, labor, agricultural, cooperative, and similar non-profit-making associations seeking licenses for radio broadcasting by incorporating into the statute a provision for the allotment to said non-profit-making associations of at least 25 percent of all radio facilities not employed in public use; to the Committee on Merchant Marine, Radio, and Fisheries.

4123. Also, petition of members of St. Joseph's parish, Ronkonkoma, N.Y., urging support of amendment to section 301 of Senate bill 2910, providing for the insurance of equity of opportunity for educational, religious, labor, agricultural, cooperative, and similar non-profit-making associations seeking licenses for radio broadcasting by incorporating into the statute a provision for the allotment to said non-profit-making associations of at least 25 percent of all radio facilities not employed in public use; to the Committee on Merchant Marine, Radio, and Fisheries.

4124. By Mr. JAMES: Resolution of Iron County Board of Supervisors, Crystal Falls, Mich., through John E. Carlson, clerk, favoring the passage of House bill 7908; to the Committee on Banking and Currency.

4125. By Mr. LINDSAY: Petition of Rand McNally & Co., New York City, opposing the Wagner labor bill; to the Committee on Labor.

4126. Also, petition of Florence Marino, secretary, Ford Radio & Mica Corporation, Brooklyn, N.Y., favoring the proposed amendment to section 301 of Senate bill 2910; to the Committee on Merchant Marine, Radio, and Fisheries.

4127. Also, petition of the Senate of the State of New York, Albany, to amend the Securities Act of 1933; to the Committee on Interstate and Foreign Commerce.

4128. By Mr. MERRITT: Petition of sundry citizens of Bridgeport, in the Fourth Congressional District of the State of Connecticut, protesting against the passage of House bill 8720 to provide for the regulation of national securities exchanges; to the Committee on Interstate and Foreign Commerce.

4129. Also, petition of sundry citizens of Bridgeport, in the Fourth Congressional District of the State of Connecticut, protesting against the passage of House bill 8720 to provide for the regulation of national securities exchanges; to the Committee on Interstate and Foreign Commerce.

4130. By Mr. O'CONNOR: Petition of the Senate, State of New York, in regard to the Federal Securities Act of 1933; to the Committee on Interstate and Foreign Commerce.

4131. By Mr. RUDD: Petition of Rand McNally & Co., New York City, opposing the passage of the Wagner disputes bill; to the Committee on Labor.

4132. Also, petition of Rev. John M. Hilpert, pastor and spiritual director, St. Catherine of Genoa Church, Brooklyn, N.Y., and 20 other citizens of Brooklyn, N.Y., favoring the proposed amendment to section 301 of Senate bill 2910, as contained in House bill 8977; to the Committee on Merchant Marine, Radio, and Fisheries.

4133. By Mr. STRONG of Pennsylvania: Petition of Kittanning Council, No. 1011, Knights of Columbus, suggesting an amendment to section 301 of Senate bill 2910, relating to radio broadcasting; to the Committee on Interstate and Foreign Commerce.

HOUSE OF REPRESENTATIVES

SATURDAY, APRIL 21, 1934

The House met at 12 o'clock noon.

The Chaplain, Rev. James Shera Montgomery, D.D., offered the following prayer:

Almighty God, blessed are the undefiled in the way, who walk in the law of the Lord. Heavenly Father, establish Thou our ways to observe Thy statutes. Do Thou renew our wills each day and blend them with Thine. Arm us with jealous care and with that faith that works by love. O Son of Man, break through everywhere for Thou art the personal, the tender, and the last possible dream of our All-Father. Animate us to the cheerfulness of duty and service by giving us a joyful sense of our daily blessings. May we look upon the hopeful side of circumstances and maintain the spirit of contentment. We pray Thee that we may be so clothed with fortitude, and whatsoever may be our duty, O keep the music singing in our souls. We rejoice that there is guidance for each of us, and by lowly listening we shall be led aright. Amen.

The Journal of the proceedings of yesterday was read and approved.

MESSAGE FROM THE SENATE

A message from the Senate, by Mr. St. Claire, its assistant enrolling clerk, announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 8471) making appropriations for the military and nonmilitary activities of the War Department for the fiscal year ending June 30, 1935, and for other purposes.

The message also announced that the Senate had passed a bill of the following title, in which the concurrence of the House is requested:

S. 2845. An act to extend the provisions of the National Motor Vehicle Theft Act to other stolen property.

THE RECORD

Mr. RICH. Mr. Speaker, I want to call the attention of the House to the RECORD of yesterday wherein the gentleman from Minnesota [Mr. SHOEMAKER] impeached Joseph W. Molyneaux, United States district judge of Minnesota.

I want first to commend the gentleman from Minnesota [Mr. SHOEMAKER] because, at the request of the Speaker, he omitted from the RECORD a large number of pages of extraneous matter, and I want to thank the Speaker on behalf of the taxpayers of the country for causing him to omit this from the RECORD.

However, I desire to call the attention of the gentleman from Minnesota—and I am sorry he is not present just at this time—to the insertion in the RECORD of 16 pages of matter, including brief of defendant, statement of facts, court order, motion of the court, and argument of counsel, which I do not believe, from the information I can gather, was essential to be inserted in the RECORD in order to make his impeachment proceedings a proper record. It was not essential.

I feel that whenever a Member of the Congress, Senator or Representative, inserts in the RECORD 16 pages of bulk matter that is not necessary to the question which he wants to bring to the attention of the House in the RECORD—we send 35,000 copies of the RECORD all over the land—if it were so important to the Members of Congress the Printing Committee could print a small number of copies of such matter. If the Member were interested in economy, he could see the Printing Committee; they could have a thousand copies printed, and it would only cost the Government one thirty-fifth as much as it would if printed in the RECORD. I think the Membership of the House ought to give consideration to the fact that putting bulk matter in the RECORD costs the taxpayers of this country an enormous sum. They should always consider this fact in their desire to fill the RECORD with speeches and reprints from newspapers, and so forth.

Mr. PATMAN. Will the gentleman yield?

Mr. RICH. I yield.

Mr. PATMAN. Did the gentleman consider the number of pages one of the Members of the other body had inserted in this morning's RECORD, consisting of newspaper editorials and news items?

Mr. RICH. I do not care whether it is a Republican or a Democrat, Senator or Congressman, it is wrong, and anything that is wrong ought to be curbed.

Mr. PATMAN. I thoroughly agree with the gentleman, but I think we should commence at the same time with the other body, which is the principal offender, and get an agreement out of them to stop putting this extraneous matter in the RECORD. Very few Members of the House are guilty. None of them should be guilty of this bad practice.

Mr. RICH. Because one body does a wrong is no good reason—two wrongs do not make a right.

I hope the Senators of our country have the same respect for the taxpayers' money as we Representatives, who are trying our best to conserve, by limiting a great amount of unnecessary printing in our daily proceeding.

Mr. TRUAX. And the gentleman is the sole judge of right and wrong, I presume.

Mr. RICH. I hope I would not be that egotistical.

WAR DEPARTMENT APPROPRIATION BILL—1935

Mr. COLLINS of Mississippi presented the following conference report on the bill, H.R. 8471, making appropriations for the military and nonmilitary activities of the War Department for the fiscal year ending June 30, 1935, and for other purposes:

CONFERENCE REPORT

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 8471) making appropriations for the military and nonmilitary activities of the War Department for the fiscal year ending June 30, 1935, and for other purposes, having met, after full and free conference have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 1, 2, 3, 4, 5, 11, 15, 20, 23, 24, 25, 33, 38, and 39.

That the House recede from its disagreement to the amendments of the Senate numbered 8, 21, 27, 29, 31, 34, 35, 42, and 45, and agree to the same.

Amendment numbered 7: That the House recede from its disagreement to the amendment of the Senate numbered 7, and agree to the same with an amendment, as follows: In lieu of the sum proposed insert "$2,522,897"; and the Senate agree to the same.

Amendment numbered 9: That the House recede from its disagreement to the amendment of the Senate numbered 9, and agree to the same with an amendment, as follows: In lieu of the matter inserted by said amendment, insert the following: "*Provided*, That no appropriation contained in this act shall be available for the payment of passenger transportation at a rate in excess of the lowest through rate or combination of rates available for the type of transportation used"; and the Senate agree to the same.

Amendment numbered 10: That the House recede from its disagreement to the amendment of the Senate numbered 10, and agree to the same with an amendment as follows: Restore the matter stricken out by said amendment, amended to read as follows: "$28,617,645, no part of which sum shall be available after September 30, 1934, for the pay of more than 11,750 commissioned officers whose original commis-